

No. 10995

2408

United States
Circuit Court of Appeals

For the Ninth Circuit.

CONTRACTORS, PACIFIC NAVAL AIR
BASES, an Association, and LIBERTY
MUTUAL INSURANCE COMPANY, a Cor-
poration,

Appellants,

vs.

WM. A. MARSHALL, Deputy Commissioner of
the United States Employees' Compensation
Commission for the Fourteenth District and
JOHN B. PIATT,

Appellees.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Western District of Washington,
Northern Division

FILED

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PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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*Page numbering appearing at foot of page of original certified Transcript of Record.

In the District Court of the United States for
the Western District of Washington, North-
ern Division

No. 851

LIBERTY MUTUAL INSURANCE COMPANY,
a corporation and CONTRACTORS, PACIFIC
NAVAL AIR BASES, an association,
Libellants,

vs.

WM. A. MARSHALL, Deputy Commissioner of
United States Employees' Compensation Com-
mission for the Fourteenth District and JOHN
B. PIATT,

Respondents.

BILL OF COMPLAINT FOR
MANDATORY INJUNCTION

Come Now the libellants above named and for
Bill of Complaint against the respondents allege:

I.

That the libellant, Liberty Mutual Insurance
Company, is now and was at all times herein men-
tioned, a mutual insurance corporation organized
and existing by virtue of the laws of the State of
Massachusetts and authorized by the United States
Employees' Compensation Commission to provide
compensation insurance protecting the employees
under the Longshoremens' and Harbor Workers'
Compensation Act as amended, and particularly by
Public Law 208, 77th Congress, Act of August 16,

1941, hereinafter referred to as The Act, and the insurance carrier provided by libellants, Contractors, Pacific Naval Air Bases, an association. in accordance with the provisions of the Act.

II.

That the libellant, Contractors, Pacific Naval Air [2] Bases, is now and was at all times mentioned herein an association of contracting firms engaged in building and erecting military and naval installations for the United States, particularly in the islands of the Pacific Ocean.

III.

That the respondent, William A. Marshall, is now and was at all times mentioned herein, Deputy Commissioner of the Fourteenth Compensation District under the provisions of the Act, and his office is located at Seattle within the judicial district of the above entitled court.

IV.

That on or about August 13, 1939, the libellant, Contractors, Pacific Naval Air Bases, employed John B. Piatt as a civilian employee to work at a base on the Hawaiian Islands occupied or used by the United States for military or naval purposes, and that said John B. Piatt continued in such employment and as such employee of said libellant until on or about February 26, 1943.

V.

That on or about February 26, 1943, the said John B. Piatt suffered a cerebral thrombosis as a result of vascular disease and hypertension, rendering him unable to continue the performance of his duties as an employee of the Contractors, Pacific Naval Air Bases.

VI.

That on or about May 25, 1943, the said John B. Piatt filed claim for compensation for disability with the said United States Employees' Compensation Commission, under Public Law 208, 77th Congress, Act of August 16, 1941, alleging that the cerebral thrombosis was the result of an accident which occurred on or about December 1, 1942 when a [3] heavy glass reflector shade dropped and hit him on the head while in the employment of said contractors, Pacific Naval Air Bases.

VII.

The cause was within the jurisdiction of the Deputy Commissioner for the Pacific District with headquarters at Honolulu, Territory of Hawaii, but with the approval of the United States Employees' Compensation Commission and as permitted by law, was subsequently transferred to the Fourteenth Compensation District, William A. Marshall, Deputy Commissioner.

VIII.

That the libellant herein gave due notice that said claim was controverted and denied that the

disability commencing on February 26, 1943 was caused by or resulted from the injury sustained on December 1, 1942, and on June 2, 1943, testimony in this matter was heard at Honolulu, Territory of Hawaii, before John C. Gray, Deputy Commissioner for the Pacific District, at which time the testimony of claimant John B. Piatt, his wife Freda F. Piatt, George L. Youmans, Commander H. P. Potter, U.S.N.R., and A. W. Morgan, was heard and transcribed and certain exhibits made a part of the record; that pursuant to oral stipulation, the matter came on for an adjourned hearing before the said John C. Gray, Deputy Commissioner, on the 30th day of June, 1943, at which time the testimony of Dr. Ralph B. Cloward, M.D., was taken and transcribed. That the cause was then transferred, as permitted by law, to the Thirteenth Compensation District, W. H. Pillsbury, Deputy Commissioner, who in turn transferred the cause to respondent Wm. A. Marshall, Deputy Commissioner of the Fourteenth Compensation District. [4]

IX.

That no additional hearing was had before respondent Wm A. Marshall, and the only other evidence submitted to him were the medical reports of Drs. Howard A. Brown, M.D. and Ernest H. Falconer, M.D., both of whom concluded that there was no possible connection between the cerebral vascular accident occurring in February, 1943 and the head blow of December, 1942.

X.

That thereafter on November 29, 1943 respondent Wm. A. Marshall made and entered his compensation order and award of compensation, a copy of which is attached hereto marked "Exhibit A" and made a part hereof as fully as if set forth at length herein. That said compensation order and award of compensation is not in accordance with law and with the provisions of the Longshoremen's and Harbor Workers' Compensation Act in this, that there was not at any time herein mentioned or at any other time any substantial evidence before said respondent Wm. A. Marshall, to the effect that the cerebral thrombosis that occurred on February 27, 1943 was caused by the injury that occurred on December 1, 1942; that in truth and in fact, all of the medical testimony submitted in the cause was to the effect that the cerebral thrombosis which occurred in February, 1943 was caused by vascular disease and hypertension, and would have occurred regardless of whether respondent John B. Piatt would have received a head injury in December, 1942 or not. That in making said order and award, respondent Wm. A. Marshall acted capriciously and without giving due regard to medical evidence submitted in the cause. [5]

XI.

That the Liberty Mutual Insurance Company is joined as a libellant herein because the Longshoremen's and Harbor Workers' Act provides for the

substitution of the insurance carrier for the employer.

XII.

That all the notices and the duly transcribed original notes of testimony taken in the cause and the original compensation order and award of compensation of respondent Deputy Commissioner Wm. A. Marshall, are in the custody of said respondent, together with all exhibits submitted in connection therewith, and it is necessary for this court to have possession of said records and all of the relevant papers in the possession of Deputy Commissioner Wm. A. Marshall in order to determine whether or not the compensation order and award of compensation of said Deputy Commissioner is in accordance with law.

XIII.

That the libellants will be irreparably damaged if a mandatory injunction annulling and vacating said award is not granted them by this court.

XIV.

That the libellants have not the right to appeal from the aforesaid compensation order and award of compensation and have no remedy available other than the redress requested by libellants in the form and manner specified in the Longshoremen's and Harbor Workers' Compensation Act.

Wherefore Libellants respectfully pray as follows: [6]

1. That the said respondent Deputy Commis-

sioner be ordered to deliver to this court or the clerk thereof a certified transcript of any claim for compensation made in this matter, all notices, transcribed notes of testimony, exhibits, compensation order and award of compensation aforementioned, and all other papers and records, or matters relating to this cause or the hearing thereof.

2. That a time and place be set so that said matters and records may be fully heard and considered by this court.

3. That said compensation order and award of compensation made by said respondent Deputy Commissioner against libellants herein, be annulled, reversed, vacated, and set aside by mandatory injunction or otherwise as provided in the Longshoremen's and Harbor Workers' Compensation Act aforesaid.

4. That libellants be granted such further relief as may be meet and proper in the premises.

JOSEPH J. LANZA

EGGERMAN, ROSLING &

WILLIAMS

Attorneys for Libellants [7]

EXHIBIT A

United States Employees' Compensation Commission,
Fourteenth Compensation District

Case No. DB-P-1-4042

In the matter of the claim for compensation under
Public Law 208, 77th Congress, Act of Congress,
Act of August 16, 1941.

JOHN B. PIATT,

Claimant,

against

CONTRACTORS, PACIFIC NAVAL AIR
BASES,

Employer,

LIBERTY MUTUAL INSURANCE COMPANY
Insurance Carrier.

COMPENSATION ORDER AWARD OF
COMPENSATION

A claim for compensation having been filed in the Pacific District and a hearing having been held in Honolulu, Territory of Hawaii, before Deputy Commissioner Gray, and the matter having been transferred to this, the Fourteenth Compensation District, by authority of the Commission for such further action as might be indicated, and such further investigation having been made as is considered necessary and no additional hearing having been requested by the parties,

The Deputy Commissioner makes the following

FINDINGS OF FACT

That on the 1st day of December, 1942, the claimant above named was in the employ of the employer above named at a place within the Pacific District, established under the provisions of the Longshoremen's and Harbor Workers' Compensation Act, as extended by the Act of August 16, 1941, as amended (42 U.S.C., Sec. 1651), to employees of contractors with the United States, and others, employed outside of the United States, and that the liability of the employe for compensation under said Act was insured by the Liberty Mutual Insurance Company;

That on said day claimant herein while performing service for the employer sustained personal injury resulting in his disability while employed as a procurement agent; that while so employed and working at his desk an electric light reflector shade fell and struck the claimant's head, causing injury and resulting in his disability;

That the employer had knowledge of the said injury;

That the employer furnished claimant with medical treatment, etc. in accordance with section 7 (a) of said Act;

That the average annual earnings of the claimant at the time of said injury were in excess of the [8] maximum provided by the Act;

That as a result of the said injury the claimant was wholly disabled from December 1, 1942, to and including January 10, 1943, and from February 26, 1943, to and including November 18, 1943, and he is entitled to 43-6/7 weeks' compensation

at \$25.00 per week for such disability or \$1,096.43; that on November 19, 1943 the total disability of the claimant resulting from the said injury continued;

That the employer and insurance carrier have paid to the claimant \$546.43 as compensation;

Upon the foregoing facts the Deputy Commissioner makes the following

AWARD

That the employer, Contractors, Pacific Naval Air Bases, and the insurance carrier, Liberty Mutual Insurance Company, shall pay to the claimant compensation as follows: \$1,096.43, covering to and including November 18, 1943; that the employer and insurance carrier shall have credit on this award for \$546.43; that subsequent to November 18, 1943 the employer and insurance carrier shall pay compensation to the claimant bi-weekly at the rate of \$25.00 per week during the continuance of the said disability; that the total compensation payable under this award shall in no event exceed \$7,500.00.

Given under my hand at Seattle, Washington, this 29th day of November, 1943.

WM. A. MARSHALL

Deputy Commissioner, Fourteenth Compensation District.

Received a copy of the within Bill of Complaint for Mandatory Injunction this 29th day of December, 1943.

J. CHARLES DENNIS

Attorney for Plaintiff

[Endorsed]: Filed Dec. 29, 1943. [9]

CERTIFICATION OF RECORD

This is to certify that the following described documents constitute the record of proceedings in connection with the claim of John B. Piatt against Contractors, Pacific Naval Air Bases, employer, and the Liberty Mutual Insurance Company, insurance carrier:

Transcript of testimony taken at hearing held by Deputy Commissioner John C. Gray at Honolulu, T. H. on June 2, 1943.

Employers and insurance carrier's Exhibit A, Part 1, being photostatic copies of hospital records.

Employer's and insurance carrier's Exhibit A, Part II, being photostatic copies of hospital records.

Report of Dr. Howard A. Brown, dated June 23, 1943.

Report of Dr. E. H. Falconer dated 6-23-43.

Telegram addressed to John B. Piatt, dated June 11, 1943, and signed by Dr. Robert Bulman.

Compensation order filed by the undersigned on
November 29, 1943.

WM. A. MARSHALL

Deputy Commissioner.

Seattle, Washington, December 29, 1943

[Endorsed]: Filed Jan. 22, 1944. [10]

United States Employees' Compensation
Commission

Before John C. Gray, Deputy Commissioner, Pacific
District.

Case No. DB-P-1-4042.

JOHN B. PIATT,

Claimant,

vs.

CONTRACTORS, PACIFIC NAVAL AIR
BASES,

Employer,

LIBERTY MUTUAL INSURANCE CO.,
Insurance Carrier.

TRANSCRIPT OF TESTIMONY AND
PROCEEDINGS

Pursuant to oral stipulation, the above entitled
matter came on to be heard before John C. Gray,
Deputy Commissioner, United States Employees'
Compensation Commission, Honolulu, T. H., on
Wednesday, June 2, 1943, at 1:45 o'clock p.m., the

hearing being held at the home of the Claimant, 646 Wyllie Street, Honolulu, T. H.

Appearances:

John B. Piatt, Claimant, in person,
C. F. White, Esq., appearing on behalf of the
employer and insurance carrier.

Reported by: R. N. Linn, Judiciary Bldg., Honolulu, T. H. [13]

Commissioner Gray: This is a hearing before the United States Employers' Compensation Deputy Commissioner in the case of John B. Piatt, an employee of the Contractors, Pacific Naval Air Bases, an association performing contract work on lands used or occupied by the United States for military or naval purposes, within the Pacific District, of the Compensation Commission, authorized by Public Act 208, approved August 16, 1941,—the so-called Defense Bases Act Mr. Piatt is present in person.

Are you represented by counsel, Mr. Piatt?

Claimant: No, sir.

Commissioner Gray: The employer and insurance carrier, the Liberty Mutual Insurance Company, are represented by Mr. C. F. White of the Mutual—Liberty Mutual Insurance Company.

Mr. Piatt has filed formal claim with the Commission, which was received May 25, 1943, in which he alleges that on or about December 1st, 1942, while in the employment of the Contractors, Pacific Naval Air Bases, a burned-out light being changed by a

co-employee fell, and the reflector struck him on the head, causing him to sustain a period of temporary-total disability, and Mr. Piatt further alleges that the blow caused concussion of the brain followed by continuous high blood pressure, with cerebral thrombosis, which manifested itself on or about February 27th 1943. A copy of this claim was received by the Insurance Carrier on May 25, 1943, and the hearing has been called without notice by agreement between the [14] parties. Is that correct?

Mr. White: Correct.

Commissioner Gray: Does that in substance represent the primary context of your claim, Mr. Piatt?

Mr. Piatt: Yes, sir.

Commissioner Gray: Mr. White, do you wish to put on your witnesses first, or would you rather have me question Mr. Piatt?

Mr. White: I believe that these gentlemen here were brought here at Mr. Piatt's request. We are not controverting the accident or the injury on December the 1st 1942. As I see it, the sole question at issue at the present time is whether or not the accident of December 1, 1942, and the so-called cerebral accident on February the 26th or 27th had any actual relationship either directly or indirectly.

I think it is noted in the claim for compensation that there was a return to light work which was interrupted again on or about February 26th or 27th.

Commissioner Gray: We will bring that out later, Mr. White. We have an answer filed here by the Carrier in which it is admitted that the applicant sustained an injury on or about the date set forth in the application, December 1, 1942. It is admitted that both the employer and employee were subject to the Longshoremens' and Harbor Workers' Compensation Act at the time of the alleged injury, being public act Number 208.

It is admitted that the relationship of employer and employee existed at the time of the injury. [15]

It is admitted that at the time of the alleged injury the employee was performing service growing out of and incidental to his employment.

It is admitted that notice of injury was given employer as specified in application.

It is admitted that applicant was temporarily disabled following the injury for the period stated in the application, and it is admitted that the rate of wages as set forth in application is correct; namely, being in excess of \$37.50 per week.

It is denied that the applicant was permanently disabled to the extent stated in the application.

It is denied that disability commencing on February 26th or 27th, 1943, the date to be shown by evidence, was caused by or resulted from the injury sustained on December 1, 1942.

Those denials, Mr. Piatt, have just been received, and, under the law, of course you have ten days, if you desire, in which to produce any evidence, if you desire to exercise that perogative. If you want to waive the ten day's notice, we would like

to have you so state, in order that we may proceed. Do you waive any necessity for ten day's preparation on this case?

Claimant: I did not quite get all the denials.

(Denials are reread to the Claimant.)

Commissioner Gray: Do you want any further time to prepare on it, or do you waive the notice.

Claimant: I waive the notice.

Commissioner Gray: All right. [16]

JOHN B. PIATT

the claimant, was called as a witness, and being duly sworn, testified as follows:

By Commissioner Gray:

Q. State your name and address to the reporter, please.

A. John B. Piatt; my address here is 646 Wylie Street, Honolulu.

Q. What will your address on the mainland be?

A. I cannot tell you as yet. We are going back to California first. It is going to be Ashland, Oregon.

Q. On or about December 1st 1942 were you employed by the Contractors, P.N.A.B.?

A. Yes, sir.

Q. What was your position?

A. I was employed as procurement agent for the Naval Construction Battalions.

Q. By the Contractors, P.N.A.B.?

(Testimony of John B. Piatt.)

A. Yes, sir.

Q. What was your annual rate of pay.

A. If I may give it.—

Q. Now you are testifying before a government official; we know for ordinary purpose that figure is confidential, but for the purpose of the hearing we have to have it, in view of the fact that there is a claim of partial disability.

A. I was being paid at the rate of \$450. a month.

Q. Did you receive any emolument over and above the cash [17] wage paid?

A. Yes, sir.

Q. Of what value, per month?

A. Eight hundred dollars last year, divided by 12, would be about a little less than \$70.—about \$67.50.

Commissioner Gray: Does the carrier agree that the average monthly wage of Mr. Piatt approximately closely \$515.50 a month?

Mr. White: Q. The \$800. that you refer to has accrued strictly for a bonus?

A. That is bonus.

Mr. White: Yes, we will agree to that.

Commissioner Gray: It will be so accepted.

Q. Mr. Piatt, will you kindly describe any untoward event that occurred about December 1st 1942 when you were in employment?

A. I arrived in my office just about 9:25 that morning, and I sat down at my desk, and my stenographer told me that my upstairs office had

(Testimony of John B. Piatt.)

a lot of requisitions to be signed, and Commander Potter of the 5th Battalion was in a hurry for them, and I had her 'phone up to have the girl upstairs bring them down to me, and they brought them down and put them on my desk and I pushed my chair back to get out of the way of the young lady that brought them down, and started in to sign the requisitions, and the lamp, a regular reflector shade, suddenly hit me on the head. I didn't realize what had happened. I just [18] felt a ringing and a splutter of glass went all over my shoulders, and that shade had broken loose and hit me on the top of the head, and pieces of glass flew all over the office.

Q. Did you continue to work?

A. No, sir.

Q. Just relate what happened afterwards, then?

A. Mr. Boskhen—Boshen——

Q. What is his first name?

A. "Hank" they call him; H. C. Boshen, he showed up. He was in the office right across the hall and he came in the doorway with Mr. Frank Shmidtz, one of the operating committee,—another one of the operating committee project managers, and they, my girls, 'phoned for Mr. Morgan to come downstairs; he was upstairs, my assistant, and I don't remember which two, but two of them took me across to the first aid station and I walked over there between them.

Q. Did you receive treatment?

(Testimony of John B. Piatt.)

A. At the first aid station they had me lie down and they put an icepack or ice-bag on my back, and on my head, and gave me some pills, I don't know what they were, probably aspirin, and they kept me there for about better than half an hour, and then they made out a card or memorandum and sent me to Dr. Stewart of the Medical Center, —I don't recall his initials,—

Mr. White: Dr. Steele F. Stewart of the Medical Group.

A. Yes. One of the boys took me down on the car to Dr. Stewart. [19] His name does not appear in my statement there.

Q. Did Dr. Stewart treat you?

A. Dr. Stewart,—I had received a cut on the upper forehead, on my scalp, very close,—a very small cut, and there was a piece of glass sticking in it, and Dr. Stewart cleaned that out; took it out and painted it, and looked me over, and then told me to go home and keep quiet for 24 hours, which I did.

Q. And then what transpired?

A. Commander Keim,—Do you want the details and the names; how it happened?

Q. It is perfectly all right.

A. Commander Keim of Public Works 'phoned the house that afternoon, while I was staying home, requesting that I go out to the office with him; he wanted to have a meeting with Commander Potter and Commander Alcott, and he said it was very important, but we told him that I could

(Testimony of John B. Piatt.)

not go, but had to stay quiet for 24 hours, and he said "I will come up in the morning and pick you up, and we will go then if you can," and the next morning, that was the morning of the 3rd, after it happened, he came up and picked me up and we went out to Commander Potter's office and then went on over but Commander Potter was not in yet, and he called them up, Potter and Alcott, and Alcott and Potter both came over to my office, and we had a meeting, or discussion, there, that Keim wanted,—and——

Q. How long did the meeting last?

A. Oh, it must have lasted about an hour and one-half. [20]

Q. Did you feel any distress at that meeting?

A. I started to get,—I got dizzy and felt pretty rotten, and finally I told them I had had all I could stand of it, and I got up and walked in Mr. Youman's office, and told Mr. Youman I was feeling pretty rotten, and I was going to have to go down and get checked up by somebody who knew something about head trouble, and I told him I was going to go down and see Dr. Cloward and I had heard about him, and I told him I wanted to go down and see him.

Q. When you were talking with Mr. Youman you are pretty sure he knew what had transpired on December 1st?

A. He knew what had happened.

Q. Did you tell him during this conversation or recall to him the event?

(Testimony of John B. Piatt.)

A. When I went in on the morning of the 3d he knew that I had been hit in the head, I presume, and I went in and told him that I felt very bum and I felt like I had a little concussion, I remember telling him that, and that I was going downtown to get checked up, and that of course met with his assent.

Q. You are both more or less key men of the company? A. Yes, sir.

Q. And you did not do like the workmen, go up and ask the foreman, you just discussed things and took it for granted it would be noted?

A. I wanted to let him know that I was going, and I felt like [21] I had been hurt worse than it appeared, and so forth.

Q. And you went down to Dr. Cloward's?

A. To Dr. Cloward's office.

Q. Was Dr. Cloward there?

A. He was not there. His nurse was, and I saw her.

Q. What is her name, do you know?

A. I don't know her name. I think the name of the first one I saw, at that time, was Edith. I don't know her last name.

Q. Miss Edith.—

A. She called Dr. Cloward and she said he was out operating and she thought he was over at Kaneohe, and she would try to get ahold of him as soon as possible, and she took the story, and said "You go home and I will have Dr. Cloward call you right away as soon as he can get in touch with you."

(Testimony of John B. Piatt.)

Q. By "the story" you mean you gave the history of what had happened and she recorded it, is that true? A. Yes, sir.

Q. So you went home then?

A. I came right up to the house.

Q. When did they call you, or call your wife?

A. As I recall it was about four o'clock in the afternoon, between 3:30 and 4.

Q. What directions did you receive from the doctor?

A. He told Mrs. Piatt to have me go right to the hospital, and he would make arrangements for admission, and he would come [22] right over and see me.

Q. You did go?

A. I went to the hospital and he met me there right away.

Q. Let's get the date you were admitted to the Queen's Hospital? A. The Queen's Hospital.

Q. On what date?

A. The 3d of December.

Q. And how long were you in the hospital?

A. I was in the hospital in December. Doctor Cloward let me come home on Christmas evening, December 24th.

Q. Were you a bed patient at all times at the hospital?

A. I was a bed patient at all times at the hospital.

Q. You came home on December 24th. Have

(Testimony of John B. Piatt.)

you been able to resume your usual duties since, Mr. Piatt?

A. During January, after I was able to get up and walk around, Dr. Cloward had me come down in the car; I was taken down in an automobile with a driver; Commander Potter send a C.B. driver to take me down, and I went down for a check-up.

Q. About what time would that be, do you recall?

A. I had been home about a week, as I recall; I am not exactly sure. It was the first week in January, Mr. Gray.

Q. It says here on the claim, simply to remind you,—it says: “Have you done any work in period of disability?” and the answer is: “From January 12th to February 27th, part time.” Does that [23] agree with your notes and records?

A. Yes, that is true.

Q. Now were the duties you performed during this inclusive period, January 12th to February 27th, wholly supervisory, or was there any manual moving about or work connected with it?

A. When I first went out there all I went out to do was,—I acted just simply in an advisory capacity for consulting on purchases, for my assistants. There have been a lot of additional requirements added on for ordering materials, and at that time I had a lot of that information in my mind and head, and I went out and stayed there and gave them all the help I could.

Q. What were your mental and physical sensations during that period that you were out there

(Testimony of John B. Piatt.)

trying to assist in an advisory capacity, between January 12 and February 27, 1943?

A. The first week or ten days I was out there I got very tired very quick, but I was very careful not to stay there more than about three hours on any day.

Q. Were you under medical observation during the entire period?

A. I was under medical observation during the entire period, and I was going down, and having the driver take me down, at least once a week, and sometimes twice a week, to see Dr. Cloward, and he checked me up, and checked my blood pressure and looked me over every time I was there and told me it was all right to go and stay at the office as long as I did not overdo, and I did [24] not stay at the office more than about three hours every day the first week. After the first week I added on a half hour at a time, and a little more, and the last three days I was out there I did stay practically the full time, the last three days.

Q. That would be, approximately, the 25th, 26th and 27?

A. Just about, yes, sir; February 24th, 25th and 26th.

Q. And you have not done any work since then?

A. None since.

Q. And you are going back to the mainland?

A. Going back to the mainland.

Q. Mr. Piatt, how old are you?

A. I was born in 1888; that would make me about 55, in July.

(Testimony of John B. Piatt.)

Q. For how long have you been employed?

A. I was employed by the Contractors since December, 1939.

Q. I mean, since you became an adult, how long have you been employed?

A. Oh, all the time.

Q. Have you ever had any lengthy periods of disability causing you to cease work over any critical, cardiac conditions; so-called "heart disease"?

A. No, sir.

Q. Have you ever had any long periods of disability from illness or disease?

A. In 1937, in August and September, I had pneumonia, in Santa Rosa, California; I was sick about six weeks, as I recall. [25]

Q. Have you ever had any major accidents resulting in injury?

A. I haven't had any accidents since 1929.

Q. I imagine you are a college man, are you not, Mr. Piatt?

A. No, sir, I am not.

Q. Did you indulge in athletics very much when you were a young fellow?

A. I played football when I went to high school.

Q. Did you ever sustain any severe head injuries while playing football?

A. None whatever, sir.

Q. In view of the fact that you are shortly returning to the mainland, and the probabilities are that we are going to have further hearings in this case in order to bring in all of the medical evidence that we can get ahold of, if you leave I would like

(Testimony of John B. Piatt.)

to have you state for the record whether or not you are willing to waive appearance at a subsequent hearing that we may hold here in order that we can get Dr. Cloward's evidence, and bring other doctors' evidence in? A. Certainly, sir.

Q. It being understood that the deputy commissioner is representing all parties in interest, and will do his best to see that the evidence is fully brought out, whether for or against you.

A. Yes.

By Mr. White:

Mr. White: For your information, and in that connection, Mr. Gray, I want to state for the record that this hearing was [26] set at 12:30 today in the belief that Dr. Cloward would be available as a witness, and on yesterday afternoon he informed me that due to a major operation he had to perform this morning, he would not be able to be here, and it would not be before this afternoon that he would be able to determine whether or not he could be present at a continuation of the hearing later on this week, before Mr. Piatt gets away. If such can be arranged, we will be glad to come out here again, provided Dr. Cloward will agree to come and we can make the arrangement.

Q. Mr. Piatt, were you examined for your employment on this contract with P.N.A.B.?

A. No, sir.

Q. Have you had occasion to receive medical attention, other than the attention you have de-

(Testimony of John B. Piatt.)

scribed, in answer to Mr. Gray's questions, since coming to the Islands? A. Only once, sir.

Q. What was the occasion for that?

A. I would like to amend that. I would like to say "twice." I have been going to Dr. Van Poole, Holmes & Van Poole, Dr. Van Poole, the ear specialist, for dilation of my left ear, the eustachian tube, for a considerable period; in fact, ever since I have been out here. And then there was another, in June of last year, 1942, I just happened to be seated in the rear of a pick-up, driving up from the waterfront,—I was down to the waterfront offices of the company, in the yard, and some new crane [27] operator was practicing and the driver didn't know he was there, and happened to just get opposite him, when he swung a load of reinforcing steel around and it banged into and smashed in the car door, and hit me in the elbow, and that is how I happened to go to Dr. Stewart in the beginning. They sent me down there for an examination.

Q. I believe that was in June, 1942, wasn't it?

A. Yes, about the 19th of June, I think; I am not sure.

Commissioner Gray: Do we have a report on that?

Mr. White: Yes.

Q. Those are the only two occasions on which you have visited doctors, Dr. Van Poole for your ear condition, and Dr. Stewart for your elbow?

A. Yes.

(Testimony of John B. Piatt.)

Q. Do you know whether either of those doctors at any time took your blood pressure?

A. To the best of my remembrance they did not.

Q. You know how that is done?

A. Yes, I know.

Q. By binding the arm and taking a mercury column reading? A. Yes.

Q. You mentioned, as your last serious illness, pneumonia, in 1937, while you were in Santa Rosa, California? A. Yes.

Q. Were you attended by Dr. Robert Bulman at that time? [28] A. Yes, sir.

Q. Do you recall, off-hand, whether he had occasion to check your blood-pressure at that time?

A. I do not recall. To the best of my memory I don't think he did. I am not certain.

Q. For the record, is it correct to say that you have joined in sending a telegram to Dr. Bulman?

A. Yes, sir, I did.

Q. With the idea in mind of getting the results of any reading he may have made during that illness? A. Yes, I did.

Q. (By Commissioner Gray) Do you desire to submit any such report for the consideration of the Deputy Commissioner if it is received?

A. Yes, certainly.

Commissioner Gray: Do you have any objection to such a report?

Mr. White: No, I don't have any objection. What I think Mr. Piatt and I were both trying to get at

(Testimony of John B. Piatt.)

was whether he did have an elevation in blood pressure at this time.

Commissioner Gray: If you are willing to have such a stipulation here in this opening hearing, at such time as you receive it, it will be made a part of the record.

Claimant: In the radiogram, Mr. White, it calls for any answer to be sent to the Liberty Mutual Insurance Company. [29]

Mr. White: I will be glad to submit a copy of any reply that is received. Due to naval requirements it is not possible to request a collect wire, and I had to guarantee in the telegram the cost of the reply of Dr. Bulman, and I haven't heard from him today. This may mean that he is not at Santa Rosa, or hasn't been able to check on that information, but as soon as a reply to this wire is received, whether in the form of a radiogram or of a letter, we will be glad to stipulate it may go in the record, and submit it.

Commissioner Gray: The deputy commissioner will receive any evidence, if received, and will receive in evidence a copy of the radio communication, sent via R.C.A. Communications, Incorporated, on June 1st 1943, to Dr. Robert Bulman, by John B. Piatt, it being understood that the reply, if received, will be made a part of the record, upon stipulation, as already made by both interested parties, and the exhibit will be marked Deputy Commissioner's Exhibit Number 1.

(Testimony of John B. Piatt.)

(Copy of radiogram marked Deputy Commissioner's Exhibit Number 1.)

DEPUTY COMMISSIONER'S EXHIBIT No. 1

Radiogram

R. C. A. Communications, Inc.

Received at 223 South King St., Honolulu at 1943
Jun 11 PM 1 00 Standard Time

1618 28 Santarosa Calif 11 1119 A ASF

L. C. John B. Piatt

646 Wylie Street Honolulu

No record of blood pressure of John D. Piatt in
1937 118 over 80 in January 1935

DR ROBERT BULMAN

Received Aug 13 1943 District No. 14
4605
230947
Pass 6

[Endorsed]: Filed Jan. 22, 1944.

Q. Mr. Piatt, do you recall the last occasion previous to 1937 on which you had a general physical check-up or examination? I believe at one time you mentioned an examination for life insurance, about 1931.

A. It is 1929, sir. I was examined for life insurance consolidated policies, in Connecticut General Life, in 1929. [30]

(Testimony of John B. Piatt.)

Q. And was that consolidation granted?

A. Yes, it was passed. That was a twenty thousand dollar health policy at that time.

Q. Were you given an examination by a life insurance doctor at that time?

A. I was, yes, sir.

Q. And he found nothing wrong with you?

A. The policy was allowed; that is all I know.

Q. Mr. Piatt, I think we are agreed that the accident occurred on December 1st?

A. Yes, sir.

Q. And that two days later, on December the 3d, late in the afternoon, you went to the Queen's Hospital? A. Yes, sir.

Commissioner Gray: Before we go any further, do you have any objection to that Exhibit 1 being made part of the record?

Claimant: None whatever, sir.

Q. I believe that the second point I want to clear up on the dates, is the date of your return to work. That was reported by Mr. Biddle as January 11th, and we paid temporary-total compensation on that basis, but if there is another date in your mind we can have it rechecked.

A. I will concede it was the 11th instead of the 12th of January.

Q. Now then the next date, the last one, I think, is the date [31] of your second admission to Queen's Hospital. I have here what purports to be a photostatic copy of a copy of the Queen's Hospital record, which indicates that you were admitted at 7:40

(Testimony of John B. Piatt.)

a.m. on February the 26th, and this notation indicates that at the time this was made you were still in the hospital, as of March 26th. After checking on the date a little further, do you agree that it was February 26th? A. I agree, yes, sir.

Q. And do you recall when you left the hospital; what date?

A. I don't recall what date it is. We have it on our calendar out here.

Q. I think I can refresh your memory on that. Would it be May the 5th?

A. Was that Sunday?—Was that a Wednesday?
(Consulting calendar)

Q. No, it does not give the date of the week here. A. May the 5th, yes, sir.

Q. Were you continuously under the care of Dr. Cloward after you went to the hospital on December the 3d, 1942? A. Yes, sir.

Q. And during the second period of your stay in the hospital? A. Yes, sir, I was.

Q. Did any other physicians attend you other than the house physician?

A. Dr. Gotshalk in the Young Building made an electrocardiograph, and a report on the heart, for Dr. Cloward.

Q. For Dr. Cloward? [32] A. Yes.

Q. Was that while you were in the hospital or afterwards?

A. No, between there, when I was out in December and January sometime; in January.

(Testimony of John B. Piatt.)

Q. Do you recall whether that was before or after you had gone back to sedentary work?

A. That was before I was,—That was just at the time when Dr. Cloward said I could go back. He wanted to check up and see if there was any reason,—if there was any possible heart lesion that was helping keep up the blood-pressure, and he checked me up and said “You are o.k.” As a matter of fact Dr. Cloward told me at that time that he would pass me for life insurance.

Q. On the basis of Dr. Gotshalk’s findings?

A. On the basis of finding that out. Mr. Gray, there is one point I want to go into.

Commissioner Gray: Just a moment. We will allow Mr. White to finish his cross-examination, if you please.

Q. After you had gone back to work on January 11th, Mr. Piatt, can you describe briefly what your general physical condition was? Did you appear to improve, or did you have periods when you were not as well as at other times?

Commissioner Gray: I think you should reframe your question. I do not think he is qualified to testify to his physical condition. He might testify as to his sensations and personal feeling.

Mr. White: All right. [33]

Q. On your discharge from the hospital, Mr. Piatt, did you feel fully recovered?

A. No, sir.

Q. Did you have any residual effects, like headaches?

(Testimony of John B. Piatt.)

A. I had headaches, like a tight band across the top of my head, and headaches in the rear of my head, and was pretty wobbly,—weak.

Q. I think you described the band as extending from across your head, practically the latitude of the ears? A. Yes.

Q. And around at the back of the head?

A. Yes, about the base.

Q. Of the brain or the skull?

A. The base of the skull. I don't know where my brain is there.

Commissioner Gray: The witness designates a point in the skull, in the rear portion of his head.

Q. In response to one of Mr. Gray's questions you described a slight cut on your,—I think you said forehead. Will you describe again where that was. A. Here. (Indicating)

Commissioner Gray: The witness designates a point about one inch above the hair line right above the skull, on the forehead.

Q. Is that the spot you were struck by the falling globe?

A. The blow of the globe hit me right above here. (Indicating) [34]

Commissioner Gray: The witness designates a point running diagonally across the top center portion of the skull as being the site of blow.

Q. You were apparently cut by fragments. Do you know whether the globe fell in front of you, on the desk?

(Testimony of John B. Piatt.)

A. A lot of it lit on the desk, and it cascaded over the shoulder, and lit on the floor, and it flew and hit the wall, and flew in every direction.

Q. Were you rendered unconscious by that blow?

A. No, I was knocked dizzy, and I slumped forward down on my desk, but I was not rendered unconscious.

Q. After you were slumped forward did you immediately resume a sitting position, or stand up, or what did you do? Do you know?

A. I could not tell you. I don't know.

Q. How long after the accident did the sensation of dizziness last?

A. I was dizzy all the time I was over in the first-aid station, on the way down to see Dr. Stewart, and all the time I was there, until I got back to the house.

Q. And on the following day how did you feel?

A. I felt all right while I was lying down, but I would get dizzy when I,—if I raised up my head.

Q. Well, now, getting back to the time that you left the hospital, on the first occasion, you described the bands of pressure across your head; how long did that sensation and the [35] headache last after you had left the hospital?

A. To the best of my recollection it was continuous for approximately the first week, and it was recurrent thereafter, but did not last.

Commissioner Gray: Let me interpose a few questions.

Q. Since you received your original injury, has

(Testimony of John B. Piatt.)

your mind been wholly free at all times, and your memory, is it capable of retaining events as clearly as it did prior to your injury? In other words, have there been times since your injury when you felt you have forgotten things?

A. There has been. I have had a hard time to remember names of people, and I try to recall.

Commissioner Gray: Under those circumstances I think we should pursue a different line of questioning, as the actual condition can be brought out by the doctor, and I do not believe his evidence on the point would be too strong.

Mr. White: No, I don't want to be confusing in my questions. I did want to get a general idea as to how long he felt bad or if it ever did improve. Let me put the question that way.

By Mr. White:

Q. Did you ever become wholly free of the tightness across your head and the headache; that is, prior to February 26th, the day you were admitted to the hospital; for the period between the time you left the hospital, and February 26th, did the [36] headache and the tight feeling remain with you?

A. It was, to the best of my memory, it was recurrent every day; I had a sensation of it, a feeling of it there, at different periods, every day during that period.

Q. Was it always at one time of day or did it occur at different times?

(Testimony of John B. Piatt.)

A. I could not recall.

Q. Will you describe, Mr. Piatt, what occurred on February the 26th, the morning of which you again reentered the hospital?

A. I got up and had gone into the bathroom, to get ready to go to work, and was standing at the wash basin, the lavatory, and I grabbed hold to support myself, and I felt my knees starting to give way, and I could not stand up, and I tried to call Mrs. Piatt, and I could not call, and I could not talk,—I just slumped on the floor, and she came and found me there.

Q. What day of the week was that?

A. I think it was Friday.

By Commissioner Gray:

Q. You were about to make a remark a few moments ago, Mr. Piatt. What did you have on your mind?

A. When I was admitted to the hospital on February 26th, when I was in the ward the nurse came in and took my blood pressure and she took it and I noticed she looked at it quick, sort of excited, and took it again the second time, and then she took it a third time, and afterwards I asked one of the nurses what my blood pressure was, and I recall somebody telling me that it was [37] 240, and that is the morning I was admitted after having a stroke, and I would like to have that clarified.

Q. Do you know the name of the first nurse?

A. No, I cannot recall.

(Testimony of John B. Piatt.)

Q. Do you know the name of the second nurse?

A. I know who the first nurse was by her voice, but I do not know her name.

Commissioner Gray: Have you an exhibit of the hospital records you want to enter here?

Mr. White: I have the photostatic copies referred to earlier in the record, covering both periods of hospitalization, but the second period only goes through March 27th, on which date the exhibit was prepared, and Mr. Piatt remained in the hospital after that until May 5th.

Commissioner Gray: Will you obtain the complete records and file them?

Mr. White: Yes. I can secure the balance of the records.

Commissioner Gray: Do you want to have this entered now?

Mr. White: Yes, I will enter these as exhibits. These, incidentally, are in duplicates, Mr. Gray. This first set represents the first period, on the admission of December 3d, and the second period covers the admission on February the 26th, 1943.

Commissioner Gray: The Deputy Commissioner has before him Clinical records of The Queen's Hospital, Honolulu, T. H., in [38] case No. 164,272, covering the period of hospitalization from December 3d 1942, in the first entrance, and to December 24, 1942, the first discharge; and from February 26th 1943, on the second admission, and at March 27, 1943, the patient was still in the hospital. If there are no objections those records will be re-

(Testimony of John B. Piatt.)

ceived in evidence and marked Employers' and Carrier's Exhibits A and B. Is there any objection?

Mr. White: No objection.

Claimant: No objection. I would like to have a stipulation, to have you determine from Dr. Cloward what my blood pressure was on or about the entrance to the hospital on the second trip.

Commissioner Gray: They will be marked as exhibits. Photostat copy of hospital record, admittance of December 3, 1942, is marked Employer's & Carrier's Exhibit A. Photostat copy of hospital record, admittance of February 26, 1943, is marked: Employer's & Carrier's Exhibit B.

(Witness excused.)

MRS. FREDA F. PIATT,

called as a witness for the claimant, being duly sworn, testified as follows:

By Commissioner Gray:

Q. State your full name and address to the reporter, please.

A. Mrs. Freda F. Piatt, 646 Wyllie street.

Q. You are the wife of John B. Piatt? [39]

A. I am.

Q. The employee appearing in this case?

A. I am.

Q. You have at all times lived at this address with Mr. Piatt? A. Yes.

(Testimony of Mrs. Freda F. Piatt.)

Q. Were you living with him there on December the 1st 1942? A. Yes, I was.

Q. What was your first knowledge that anything out of the way had happened to Mr. Piatt?

A. On December the 1st he came home around 11 o'clock, and said he had been hit on the head.

Q. How long have you been married?

A. Twenty-five years next July.

Q. Has Mr. Piatt always been a regular worker and provided for the family regularly, without any long periods of illness?

A. Never ill, except with pneumonia.

Q. Specifically, for six months, to December 1942, had Mr. Piatt made any special complaints of feeling funny, or bothered by pains in the head, or a feeling that he should not go out to work for any reason?

A. No, he was always very well; willing to go out and work, but he was tired.

Q. Tired when he came home?

A. Yes, as you do get in this country.

Q. After he got home, after December 1st, 1942, he related [40] the story of having been hit in the head. You have heard him testify as to the sequence of the events that followed, giving the dates and things that occurred, as to going to the hospital and coming from it? A. Yes.

Q. You were aware of all these things, were you?

A. Yes, I was aware of all of them.

Q. Between the two times he was in the hospital he resided here at home, didn't he? A. Yes.

(Testimony of Mrs. Freda F. Piatt.)

Q. He was doing part-time work out in the yard?

A. Yes.

Q. What, if any, were his specific complaints during that interval between his periods in the hospital?

A. As soon as he went to work, or tried to work, after two or three hours work he would get very tired, and the company provided a driver and a car for him, and it saved that much, sir, and immediately he got home,—sometimes at four o'clock, he went to bed and stayed there.

Q. Did he appear to be worried mentally about his condition at the time? Was he worried about his condition?

A. Yes, he wondered what was the matter with his head.

Q. What was the date that here at home something out of the ordinary occurred while Mr. Piatt was in the bathroom?

A. It was on the 26th of February, 1943. [41]

Q. Just what do you know about what happened at that time? What did you say to him, and what did he say to you?

A. Well, I had got up previously and gone in and turned on the electric heat in the bathroom, and I had gone back to bed, for just about five minutes, maybe.

Q. What time of day, about, was this?

A. I would say it was about 6:20, and for some reason,—I don't usually go in the bathroom after

(Testimony of Mrs. Freda F. Piatt.)

he is in there, and I just hollered in and said "Are you ready yet?" and he never made any reply, and I did not hear any noise in there, and I went in to see, and found him on the floor.

Q. Was he unconscious?

A. No, he wasn't unconscious; he could talk.

Q. What did he say to you?

A. He kept saying, "I have to get up and get on the job, go to work."

Q. Did you try to assist him up? A. No.

Q. What position was he in in the bathroom?

A. He had his arm up over the tub, and this one was down (illustrating), and he was trying to raise up.

Q. Was he in a prone position or down on his knees?

A. No, his knees were out on the floor, out here, and his arm was out over here, and he was trying to hold himself up. (Witness illustrates.)

Commissioner Gray: Witness indicates a male figure partially recumbent on the bathroom floor with the right arm partially [42] over the bathtub.

A. I knew by the way he looked that he undoubtedly had had a stroke, and he could not move his leg; he could not move his left leg, and I persuaded him to stay there, and it was warm there, and I had had the electric heat on, and I got blankets too, and got a pillow and put his head on it, and I said "Be quiet" and I went and called Mr. Morgan and Dr. Cloward, and they came shortly afterwards. Mr. Morgan came in about five min-

(Testimony of Mrs. Freda F. Piatt.)

utes, and Dr. Cloward said "Send him to the hospital."

Q. And he was removed to the hospital, was he in an ambulance?

A. Yes, he was removed to the hospital. I kept him on the floor until the ambulance came.

Q. Is there anything else you know about the case that you think would be of pertinent interest?

A. I think it should be brought up that when he went to Dr. Stewart—

Q. Were you present?

A. No,—I am not saying that; I merely want to bring up the fact—

Q. What I am trying to get at is, do you know of anything that you saw or heard of pertinent interest in relation to the case. We have to have that directly from your personal knowledge.

A. It is not seeing or hearing, just merely calling attention to the time. Would that be all right? Here is what I want to bring up. Suppose you hear this, and see if it is all right? [43]

Q. Go ahead and make your statement.

A. It was about 54 hours from the time he had the accident and went to see Dr. Stewart until Dr. Cloward told him to go to the hospital and stay in bed. He was up all that time. Now I think you will find out that in a hit on the head you should be hospitalized, or at least stay flat, immediately.

Q. We will go into that when we get the doctor. Is there anything else, Mrs. Piatt?

(Testimony of Mrs. Freda F. Piatt.)

A. I think that is all.

Mr. White: No cross-examination.

(Witness excused.)

Commissioner Gray: Any other witnesses, Mr. Piatt?

Claimant: I would like to have you question both Mr. Youmans and Commander Potter about my activities, health and ability to do my work prior to the time I got hit in the head, and afterwards.

GEORGE L. YOUMANS

was called as a witness for the claimant, and being duly sworn, testified as follows:

By Commissioner Gray:

Q. State your full name.

A. George L. Youmans.

Q. And your address?

A. 3887 Lurline Drive, Honolulu.

Q. What is your position with the Contractors, P. N. A. B.?

A. I am a member of the operating committee.

[44]

Q. As such, are you in a position to supervise and collaborate with and know of the actions of Mr. John B. Piatt?

A. Yes, Mr. Piatt worked directly under my supervision at all times.

Q. Would you state briefly, for the record, just how this matter was brought first to your attention,

(Testimony of George L. Youmans.)

and anything that you definitely know of the subsequent events?

A. Well, the morning of the accident, the day of the accident, which I understand was December 1st, I did not happen to be in at the time they took Mr. Piatt out of the office. My office is at the other end of the hall, and it is three or four hundred feet away.

Q. Is that on land used and occupied by the United States for military and naval purposes?

A. Yes, right in the Navy Yard proper. Our office manager, Woelfert, came into my office, knowing that Mr. Piatt worked under my direction, and asked me if I had heard about Jack being hurt, and I said no, I had not, and he said "Well, the shade dropped off and hit him on the head, the shade that was over his desk," and so I asked him what had happened to Mr. Piatt after that, and they said he was over in the first-aid station across on the road from the office, and by the time I could call the office they had taken Mr. Piatt home. I think I called on Mrs. Piatt that morning, and asked her if she knew anything more about his condition, or had anything developed at [45] that time, and she said no, that he was home then, and lying down, and I told her, I think, for him to stay there until he felt able to come back to work, and Mr. Piatt, of course, in connection with the work there, had sole charge of the procuring of the materials for the Construction Battalion, and we had put him into that position because he had done similar work

(Testimony of George L. Youmans.)

for a job we had had in one of the outlying islands prior to the war, and about that time the Construction Battalions were getting started, and there was work coming in, and there was a great deal of confusion, more or less, as to how we were going to operate to procure materials for them, and without Mr. Piatt being there it left us in kind of a bad hole, although he had several assistants that could probably carry on, so naturally we were interested in knowing the extent of the injury, and all that was taking place, and in getting him in first-class condition and back on the work as fast as possible, however, not knowing about the medical end of it, and we had just acquired the knowledge he could come back in a day or two days, as I remember, and after that he did come back to work, and he had a conference with Commander Potter, who was in charge of the Construction Battalion here at that time, and Commander Keim, I believe, who was the Public Works officer, and he came into my office the day he came back to work after the accident, and told me, I think about 12 or 1 o'clock, that he could not stand to be here any longer, he had to get back home, and I [46] told him all right, go back, and to stay until he did feel good; until he felt better.

Q. You inferred it was a physical condition that resulted from the injury of December 1st?

A. Of December 1st. And then I kept in touch by telephone, and by talking to Mr. Morgan, who

(Testimony of George L. Youmans.)

worked with Mr. Piatt, after he had gone to the hospital, and kept track of him and how he was getting along, and how soon we could expect him back, and I believe he came back sometime in the early part of January and came in and saw me at that time, and told me then he thought he could come down maybe three or four hours a day and keep his hand in on things and help the boys where he could, and he would have to go back home after that, and I told him I thought that that would be all right, and that lasted until the latter part of February when the second attack, that he just described, occurred, and since then, of course, he has not returned to his work.

,Q. This work to which Mr. Piatt returned, would you consider it, in your opinion, simply that of an ill man getting up and attempting to help out, to keep the program running, and to fulfill the duties in part that he previously had been assigned to?

A. Yes, I would, because on this kind of a job, the man on the job,—who had charge of it, it is something that a man carries a great deal of the things in his head that nobody knows [47] very much about excepting him, and it involves a knowledge of the work on the outlying islands, and getting stuff out to the islands, and things change in five minutes, with ships coming in and out, and a man in Mr. Piatt's position would be the only one to know when those things happen, and without a key man like he is you are pretty much lost in that end of it.

(Testimony of George L. Youmans.)

Q. You have observed thousands of men at work, haven't you? A. Yes, quite a few.

Q. Would you say in your opinion you are pretty well qualified to judge whether a man is working under a physical handicap or not?

A. I think so.

Q. Do you consider that during the time that Mr. Piatt worked that he was laboring under a physical, and perhaps mental, handicap, as a result of his injury?

A. I would, very much so. Several times when he came in and tell me some of his troubles, I would say "Sit down, keep quiet, and don't try to talk too much about these things." I knew he was under mental stress.

Commissioner Gray: Any questions, Mr. White?

Mr. White: No cross-examination.

(Witness excused.)

COMMANDER HOWARD PRATT POTTER,
U. S. N. R.

was called as a witness for the Claimant, and being duly sworn testified as follows: [48]

Direct

By Commissioner Gray:

Q. Will you kindly state your full name, rank and address to the reporter, please.

A. Howard Pratt Potter, Commander, Civil Engineers' Corps, United States Naval Reserve.

(Testimony of Com. Howard Pratt Potter.)

Q. You were stationed on this island about December 1st 1942, were you?

A. I was, sir. I have been here since June, 1942.

Q. Commander, will you state briefly, for the record, just what you know; saw or heard, in relation to the events testified about by Mr. Piatt?

A. Mr. Gray, could I make one statement to show my connection with Mr. Piatt, and my work; I think that would shorten it up?

Q. Just go right ahead and make your own statement.

A. I first arrived on the islands as **officer in** charge of the 5th Construction Battalion, and as Mr. Piatt was the man in charge of the procurement for the construction battalions, practically all my contact with the P.N.A.B. was through Mr. Piatt, and a few months after I was here I was made regimental commander of three battalions, and which grew to 11 battalions, and during that time my contact with Mr. Piatt was increasing more and more. Now, I think,—doesn't that show the connection with Mr. Piatt?

Q. Yes. With such contacts over this period of time, would you say it would call for the action of a vigorous, healthy man in [49] carrying out the duties such as Mr. Piatt was performing, in your opinion?

A. It would, sir.

Q. Go ahead, Commander.

A. During this time I expect I have been in telephone communication with Mr. Piatt at least four or five times daily, and perhaps a conference

(Testimony of Com. Howard Pratt Potter.)

in the morning and a conference in the afternoon, either in his office or in my office.

Q. Did he ever present an appearance or show evidence of outward, untoward fatigue during the period prior to December 1st 1942, in your knowledge?

A. As far as our contacts were concerned, he did not. In fact I was awfully surprised at his seemingly limitless energy.

Q. Now to come down to December 1st, were you in the vicinity of the Contractors' office on December 1st 1942?

A. On that date,—my office is at Red Hill, and I expect four miles from the Yard, and my first knowledge of the accident was when I called in to ask him something on some job, and some girl in the office told me that he had had an accident and had gone home.

Q. Then you did not see the accident?

A. No, I did not see the accident.

Q. And you were not there immediately afterwards?

A. I did not see Mr. Piatt until the morning of the conference with Commander Keim and Alcott in Mr. Piatt's office. [50]

Q. During that conference did Mr. Piatt evidence signs of fatigue and tiredness and mental anxiety? A. Very much so, Mr. Gray.

Q. Did you have to break up the conference earlier than you might otherwise have done on that occasion?

(Testimony of Com. Howard Pratt Potter.)

A. Yes, we did. I did not nearly cover the territory or the ground of this conference as planned, because we could see that Mr. Piatt was in distress, and I thought at the time that his memory was not in such shape, or his physical condition was in such shape, that the Conference really had no particular value.

Q. In other words, compared with the mental alertness exhibited by him on many previous occasions prior to December 1st 1942 he on this occasion presented a less fitness?

A. To a very marked degree, yes, sir.

Q. And did he complain, make any verbal complaints, that you heard, at the time of this conference?

A. He made no verbal complaints, but I noticed he would pick his head several times.

Commissioner Gray: The witness designates Mr. Piatt's having placed his right hand up in the region of the forehead, as if it were hurting him, and as if he were tired.

A. And his evidence of stress made us all unconsciously close the conference as soon as possible.

Q. Is that about the limit of your knowledge?

A. I think it is, yes, sir. [51]

Q. Do you have any other knowledge of Mr. Piatt's disability?

A. I naturally was curious about the accident, and I got that information second or third hand, through Mr. Morgan and through people in the operating base, and I called here at the house sev-

(Testimony of Com. Howard Pratt Potter.)

eral times in person and by 'phone to check on his condition. In fact, I sometimes felt guilty because there were decisions to be made that I could not make without some assistance from him.

Commissioner Gray: Have you any questions you would like to ask the Commander?

Mr. White: Yes.

By Mr. White:

Q. On the day of the conference you speak of, Commander, did Mr. Piatt ask that the conference be concluded, or was that done voluntarily by you?

A. I think it was done voluntarily by all of us. We saw that he was in distress.

Q. Is there anything significant about your contracts with him after he came back to the office for a short period in January?

A. Yes, I think there is. The difference in his grasp of the situation, and on the plans and specifications,—I would like to explain that a little in detail if I could, sir.

Commissioner Gray: Go right ahead.

A. These construction battalions came out in increasing number. We have been taking over the work of the civilian [52] employees, and the question of procurement and organization has become a very large problem. It has reached the stage where Mr. Piatt had been (not officially) selected to head up that group, and he and I were working on an organization in which our offices would be in the same building, and our files would be correlated

(Testimony of Com. Howard Pratt Potter.)

and our operations practically one operation, and that organization had everybody's approval, and mine, and Captain Hartung's, my senior officer, was very well satisfied with the arrangement.

Q. Is that the captain in charge of the Public Works, or the individual?

A. The District Public Works officer, yes, sir.

Q. And after Mr. Piatt's return to the office, what did you observe?

A. After Mr. Piatt's accident there was such a change, oh, in his grasp, for one thing; his grasp of the situation, and his memory of all the details, and it was such that opposition came up to his appointment to that job.

Commissioner Gray: Q. Wouldn't you prefer to say, Commander, that it became necessary to reconsider?

A. Yes, "opposition" is a poor word.

Q. To reconsider his qualifications; apparently they had deteriorated on account of the disability?

A. Yes, I would put it that way. The thing that stands out, in my associations with Mr. Piatt, is his keen memory on detail, and his office seemed to be the one everybody turned to when [53] they could not get the answer any place else.

Q. That condition has changed since December 1st 1942?

A. Yes, it has changed since that time.

Q. In your opinion, from observation?

A. It has very much, sir. My work has increased 10-fold, or my associates, rather. I think,

(Testimony of Com. Howard Pratt Potter.)

Mr. Gray, that the big consideration from my viewpoint, is Mr. Piatt's experience in the outlying islands, his memory of things months back, say of particular parts for an engine that somebody needed, he could tell me where they were, and under what conditions they were bought, and when he came back the second time I would ask him these things and he would say "I should know that, I have some remembrance," but he would shake his head and say "I cannot give you the details."

Q. Now, Commander, in the course of your naval career you, of course, have handled thousands of men?

A. I would not say "thousands" but I have handled a lot of men in the Navy and in my own business.

Q. In fairness to all parties, would you consider yourself more like an expert in determining whether a man being observed by you was physically and mentally capable of carrying on his work, or to the contrary?

A. I think I would, sir.

Q. And your statements, as related to Mr. Piatt's case, are based on such expert knowledge, are they not?

A. Yes, sir, and ample time to have had association with him, for several months prior to his accident, and to know his [54] capabilities.

Q. In other words, you feel you are a little better qualified to pass on his personality change from a layman's standpoint than somebody whom you had only seen casually?

A. Yes.

(Testimony of Com. Howard Pratt Potter.)

Mr. White: No questions.

(Witness excused.)

(A five-minute recess was here taken.)

MR. ARDEN WALTER MORGAN

was called as a witness for the Claimant, and being duly sworn testified as follows:

By Commissioner Gray:

Q. Will you state your name and address.

A. Arden Walter Morgan, 2982 Kuhio Avenue, Honolulu.

Q. Are you an employee of the Pacific Naval Air Bases? A. Yes, sir.

Q. Were you such an employee on or about December 1st 1942? A. I was.

Q. Where are your offices situated?

A. Inside of the Pearl Harbor Navy Yard.

Q. Are they in close proximity to the offices occupied by Mr. Piatt?

A. They were in the same building.

Q. Are you associated with him in his work?

A. Yes, sir, I was his principal assistant.

Q. Please state for the record just what you saw and heard in [55] connection with any untoward event that happened on or about December 1st 1942, in which Mr. Piatt was involved.

A. I was called to his office by one of his girls, about,—the time I don't know, the exact time, that

(Testimony of Arden Walter Morgan.)

morning, and this girl called my office on the 'phone and I went right down and walked in the door and this light globe was scattered all over the floor, and Mr. Piatt was then,—he was sitting down at that time, and he was quite dazed, and then the other girl, who was down there in his office, was taking some requisitions down from my office, and told me what had happened.

Q. What was the name of that young lady?

A. Miss Jenuwin.

Q. Go ahead and relate what the young lady said.

A. She told me that she brought the requisition in for him to sign, and she had just gotten into the door and was about to take them to his desk, they were various orders, when this light globe fell.

Q. Where was the light globe situated as to where he was seated?

A. It was on the ceiling right above where he sat at his desk, sir.

Q. Are you an engineer by profession, sir?

A. Yes.

Q. Could you closely approximate the distance that the globe would be above the head of Mr. Piatt; from the height he would be sitting at the desk in that office?

A. The height of the ceiling is approximately ten feet, within [56] two or three inches of that, and the light globe is the type that you find right against,—fitting right against the ceiling, and it does not hang down on a chandelier.

(Testimony of Arden Walter Morgan.)

Q. Then what would you estimate the length of fall of the globe to be, approximately?

A. About, between,—six feet, at least.

Q. Did you bring a globe of similar dimensions and weight with you to this hearing?

A. Yes, I brought one that was identical with this.

Q. Will you bring it over here, please.

A. (Witness produces a globe.)

Q. Have you weighed that globe?

A. I haven't myself, but an assistant in my office has taken the weight.

Q. Do you have a slip there on which the weight is recorded? A. Yes, given to me by him.

Q. What is the weight recorded?

A. Three and one-quarter pounds, but how accurate those scales are I do not know.

Commissioner Gray: The witness testifies about, and displays a glass composition, indirect lighting globe, slightly rounded on the bottom, and weighing approximately 3 $\frac{1}{4}$ pounds.

Q. Is this a similar type of a globe that is in place as part of the fixtures of the office at which Mr. Piatt was working on December 1st 1942?

A. Yes, that is identical with the one that fell.

[57]

Q. Then what else did you find out about the occurrence?

A. I have the exact height of that ceiling. Do you want that before I go on?

(Testimony of Arden Walter Morgan.)

Commissioner Gray: Any objections to him reading that into the record?

By Mr. White:

Q. Did you make the measurement yourself?

A. My assistant did. I did not make that myself.

Q. Who is your assistant?

A. Dwight Savage.

Q. Was that in connection with the request made by Mr. Woelfert for measurements?

A. Yes, I knew he had made a request, and our office gave him that information.

Q. Do you know whether Mr. Woelfert posed as Mr. Piatt, or as the man sitting in the chair at the desk?

A. No, I was not present when those measurements were taken.

By Commissioner Gray:

Q. What was the measurement of the room, according to this, as made by your assistant?

A. 118 inches was the total height.

Q. That would be nine feet and over.

A. Nine feet ten inches.

Commissioner Gray: Any objection?

Mr. White: No, I think that is all right. [58]

Q. Go ahead and read any other figures you have got.

A. That is all the figures I have.

Q. Go on with your narration of anything you saw or heard about the occurrence.

A. After being called down to the office there and finding out what had happened, we took Mr.

(Testimony of Arden Walter Morgan.)

Piatt across the street to the First Aid station, and I do not recall who helped me. There were two of us, and several people were around there, and in the excitement I do not know who did help me, but I know it was raining, and I know we carried his raincoat and his glasses, and we carried his raincoat and glasses across the street, and attempted to throw the coat over his shoulder as we were going, and he was able to walk at that time across the street, with our help; he had an arm around me, around my shoulder, and one around another man's shoulder, and we took him over there, where they had him lie down on the bed.

Q. About what distance would that be from the office to the dispensary, please?

A. I would imagine it would be about three or four hundred feet.

Q. That is an approximation?

A. Yes, that is only a guess of how far it was; three or four hundred feet. After he had been over there for some little time they apparently had called Dr. Stewart or made arrangements to take him down to Dr. Stewart, and Dwight Savage took Mr. Piatt's car, and that was the car that was assigned to him out [59] there, and took him down to the doctor.

Q. To get back to the dispensary, was he given any first-aid treatment while he was there?

A. I don't know what the treatment was.

Q. Did you notice any lacerations on his head?

(Testimony of Arden Walter Morgan.)

A. Yes, there was one, a short cut, but it was bleeding quite a lot, bleeding quite a little, and was running from here. (Indicating.)

Commissioner Gray: The witness makes a point about one inch above the center of the hair-line in the center of the forehead.

A. That's right, it was about there.

Q. From a layman's viewpoint, did you infer that Mr. Piatt appeared dazed at the time you took him in to the first-aid station?

A. Very much so. He is a very heavy man, and he rolled several times in walking across the street, or he reeled, on the way across (indicating), as we were helping him across.

Q. You mean he shifted the burden of his weight from you to the other man and back?

A. Yes, he shifted his weight, one moment one way and the next the other. We had quite a bit of difficulty with him.

Q. He sort of staggered?

A. Yes, he staggered very much.

Q. After that, you left? [60]

A. When I took him into the doctor's office, that was the last I knew of it at that time, until I came here to the house. I am not sure when that was, whether it was that evening or the next morning, after work; I believe it was that evening, I stopped at the house, and he stated to me then that he had been told to stay quiet for a day or so. And he did not come back to work the following day, and the

(Testimony of Arden Walter Morgan.)

first day he was back to work was when this conference was called, the second day.

Q. In the course of your work do you have occasion to view the physical characteristics of a great many workmen out there?

A. Not a great many, but some.

Q. Well, you are in the office, are you not?

A. Yes.

Q. And you have a good deal to do with the personnel, the people coming in and out?

A. That's right.

Q. On the basis of that fact what would be your opinion as to Mr. Piatt's mental and physical vigorousness prior to December 1st 1942?

A. Prior to?

Q. Yes.

A. I never worked for a man or with a man who showed any more tremendous energy.

Q. How long have you worked with him?

A. Since September 1st, I believe; September 1st, I started there. [61]

Q. 1942?

A. 1942. I was moved into his office.

Q. So you were very closely associated with him during all that period of three months?

A. Yes, almost continually, continual association with him all of that time.

Q. And what, if any, difference was there in his general appearance and actions after December 1st as compared with his actions prior to December first, that you observed?

(Testimony of Arden Walter Morgan.)

A. Well, after December 1st, of course I had very little contact with him, except when he came back to the office there and was taken to the hospital, and I was in to see him a few times in the hospital, and I had very little contact until he came back to work in the early part of January, and at that time he was not the same as he had been before; he was not as sharp in his work, and he tired very easily, and all of that time that he was back we tried to consult him only to be advised of what to do; we were in a spot, and we needed his knowledge, to be advised,—in an advisory capacity, and I even took over myself all the signing of routine paper work, and signing his name.

Q. In other words, from what you learned from observation, did you infer that there had been quite a distinct personality change in the man following his injury as compared with that that existed before the injury? [62]

A. Not so much of a personality change, with the exception of his nervousness and flightiness, but there was a very decided change in that way, and about very little things. He was a man that was able to carry a good many things in his mind and handle them efficiently, and little things, and very few of them, did him right up and he became very tired.

Q. You are now referring to the particular period before December 1st 1942?

A. No, I am referring to the time after that. May I amend that? Before that time he was able

(Testimony of Arden Walter Morgan.)

to carry a good many things in his mind, and the detail did not bother him, no matter how much he had to take care of, but after his accident, when he came back there, then why if we had much detail to go over, after he came back, he became very nervous and very tired, and was unable to go on.

Q. You mean he appeared to become very tired?

A. Yes, appeared.

By Mr. White:

Q. When you say he appeared tired, Mr. Morgan, was that your conclusion or did Mr. Piatt communicate that to you in the form of a statement, or what?

A. Yes, sir, at times.

Q. What trouble did he complain of when he first came back to work?

A. The only thing that he would mention to me was getting tired, [63] and of headaches, continual headaches; he didn't mention it very much, it was more in his attitude and in the way he handled his work, and my own conclusion.

Q. You were aware of the fact that he had been away from work some forty days and there were a good many things he had missed during that time, and with which he had to acquaint himself, or on that, again, did you single out the more important things?

A. Only the more important things.

Q. On which to consult him?

A. Yes, the detail I never did go into. We tried to bother him as little as possible on the detail, and on the more important things we did try to keep him informed about.

(Testimony of Arden Walter Morgan.)

Q. You estimated, the original estimate you made on the height of the room was ten feet, and then you produced a measurement that comes to nine feet——

A. Nine feet ten inches.

Q. How far below the ceiling surface would you say that the globe *depended*; was it a chain fixture or a flush fixture?

Commissioner Gray: The witness has already testified to the fact that this globe was in a fixture directly attached to the ceiling.

Q. How far below the ceiling level was the bottom of the globe?

A. That would only be a guess. It would be,— I don't believe it would be over a few inches. It was sitting very close to the ceiling. [64]

Q. If you were informed that the base of the globe was approximately,—about, approximately 46 or 48 inches above the head of the man seated in the chair beneath it, would you disagree with that figure, seriously?

A. No, I could not, unless I made the measurements myself. I would think however that it would be a little further than that, but I may be in error.

Commissioner Gray: Have you anything in that respect?

Mr. White: Mr. Woelfert did have such a measurement made, and if I understood it right, his statement to me was it was 46 inches.

Commissioner Gray: Do you want to produce Mr. Woelfert?

(Testimony of Arden Walter Morgan.)

Mr. White: I would be perfectly content to have Mr. Morgan make the measurement himself, if he would like to, and submit it in the form of a letter.

Commissioner Gray (To claimant): How tall are you, sir?

Claimant: I am about five feet eleven and one-half inches.

Commissioner Gray (To witness): Would you be kind enough to agree to find some man five feet eleven and one-half inches and have him sit in that chair, and Mr. White, would you have any objection; would you agree to let him take the measurement, and have him sit there and make the measurement from the center, from his head, to the bottom of the globe, it being understood that the globe will be similar to the one that was there on December 1st 1943?

Mr. White: I will agree. The reason for that is [65] that somewhere in the hospital record the distance is described as 12 feet, and I think in another place it is stated as eight or nine feet.

Commissioner Gray: Do you have any objection to such observations being taken for the record, Mr. Piatt?

Claimant: None whatever. May I add this: When I went back in January I measured that myself, and I had one of those flexible steel rods, and I got it as good as I could, and one side of the wall was 11 feet, and I made a measurement of myself sitting in the chair; at the top of the head,

(Testimony of Arden Walter Morgan.)

I got a net difference of about six feet, the same as Mr. Morgan, who spoke about the six foot fall.

Commissioner Gray: Perhaps it would be well for Mr. Morgan to do that in Mr. Piatt's office.

Witness: May I go a little further in that, and certify all of those dimensions?

Commissioner Gray: We will be very glad if you did. We would like to get at the facts.

Witness: I would like to verify all of these figures I have given.

Commissioner Gray: For convenience sake, you can send that to Mr. White, and we will get it.

You have no objection to those figures being entered as exhibits in the case, as an appendix to the record?

Claimant: None whatever [66]

Commissioner Gray: And you have no objection?

Mr. White: None.

(Witness excused.)

Commissioner Gray: Is there anything further?

Claimant: There were several items I was going to have Mrs. Piatt bring out, if she remembered, and I would like to have you put her back on the stand.

Commissioner Gray: The witness will take the chair, and is reminded that she is still under oath.

MRS. FREDA F. PIATT

recalled as a witness for the claimant, being reminded that she was still under oath, testified as follows:

Claimant: Freda, I wanted you to bring out the point about my first visit to the hospital, in December; what happened, the reaction when they first sat me up in the chair?

A. Well, they told me that they thought he could go home in fourteen days after he arrived there.

By Commissioner Gray:

Q. Let's get this down to dates and places. What date was this?

A. It was about nine days after he was in there, and if he was put in on the 3d of December it would be about the 12th of December.

Q. About the 12th. And you visited your husband in the hospital at that time, is that true?

A. Yes.

Q. Was he a bed patient? [67] A. Yes.

Q. And you inquired as to the possibility of his being returned home? A. Yes.

Q. And then what did they tell you?

A. They said that he could probably go home on or about the 14th day.

Q. Who made that statement, do you recall?

A. The doctor.

Q. What doctor?

A. Dr. Cloward. And they were figuring on

(Testimony of Mrs. Freda F. Piatt.)

him getting up on about the 11th day, and then a couple of days later he could go home with me.

Q. Did they allow him to get up on this particular day?

A. He sat up on that day, and it gave him a temperature of 101 and something.

Q. Who recorded that temperature?

A. The nurse. That will probably be in the record.

Q. Was Dr. Cloward present?

A. Not while it was taken.

Q. But was he present when your husband sat up in the chair?

A. I don't think so, but it was by his orders, and he stayed up about five or ten minutes, and started to get chilled, and they put him back in bed, and when his temperature rose the doctor said "no, we will put you down flat again," and they put him clear down flat, and kept him there until the 26th.

[68]

Q. Was the doctor called into the room?

A. He went in nearly every day.

Q. We are recording the sequence of events, and the statement was made he allowed your husband to sit up, after he had been there a certain number of days, and then he was put back down in bed. Where was the doctor from the time he first visited your husband until the day he instructed him he should stay down in bed; was he present in the room?

(Testimony of Mrs. Freda F. Piatt.)

A. No, he was not present, but the next day he called, which might possibly be the next day, and he gave orders to put him flat.

Q. This later event you just simply heard about; your husband told you?

A. I went back and he was flat, and I said "Why?"

Q. Who did you ask?

A. Well, he was asked, and I asked the nurses why, and the doctor why, and at that time the doctor said the blood clot evidently was not eradicated, and they put him down flat for a while longer.

Q. Will you repeat that statement again.

A. He said it might not have been eradicated, but "dissolved," I think, is the word he used; that the blood clot had not been dissolved.

Q. Who made that remark?

A. Dr. Cloward.

Q. And that was in the presence of yourself and your husband? [69]

A. Yes. And so they will put him down flat again, and they started bringing him up after four or five days, the same as they had before, and when they sat him up again one day he could come home, and he stayed a week longer than they had intended him to in the first place, and they were figuring on him coming home earlier.

Q. We appreciate your concern, but I am afraid we will have to bring out the proof on this from

(Testimony of Mrs. Freda F. Piatt.)

the hospital records and on Dr. Cloward's testimony, otherwise the other interested party could object to it being entered.

A. I was merely trying to bring out the fact that he was there longer than they expected him to be.

By Mr. White:

Q. These conversations with the nurses and with Dr. Cloward, they all concerned the time of about December 12th and 13th? A. Yes.

Q. This sitting up one day and your finding him lying back in bed on the following day?

A. Yes, they put him down flat again on the following day.

Q. Yes, and after which you discussed certain matters with Dr. Cloward?

A. Yes, and they said he could not come home, and he had to go back to being flat until the blood clot was dissolved.

Q. Are you certain that Dr. Cloward used the words "blood clot"?

A. I am practically certain he said that the blood clot was not dissolved. [70]

Q. Do you know from anything in your conversation to what bloodclot he was referring?

A. To some kind of a,—as I understood, some kind of a blood clot on the inside of his head, that is caused by practically any hit on the head.

Q. That was your understanding from talking to Dr. Cloward? A. Yes.

(Testimony of Mrs. Freda F. Piatt.)

Mr. White: I think that is all.

(Witness excused.)

Commissioner Gray: I think that what Mrs. Piatt has in mind is this; that even though he should not be present during Dr. Cloward's testimony, he would like to have him interrogated on that line.

For the record, the Deputy Commissioner will state that subject to his limited qualifications he will attempt to bring out all medical facts pertinent to the case, both pro and con, for and against you, and as I said before, to do so in an effort to get every fact on which we can consider the case. Now if you desire that the hearing be held here, and Dr. Cloward can come here, we will be glad to have the hearing here, but you have to realize that these doctors are terribly busy men these days, and in order to get these cases attended to with some despatch we have to favor them somewhat; they are fatigued and tired, and they are doing this in their off moments, when they are not working. Now in the event we cannot get Dr. Cloward to [71] appear at your home, are you willing to waive your personal appearance at a further hearing, in order that we can record Dr. Cloward's testimony?

Claimant: Certainly.

Commissioner Gray: It is your right to agree, or not to agree.

Claimant: Yes.

Commissioner Gray: What is your position?

Claimant: Yes, I will give a waiver.

(At this point an off-the-record discussion was held by all interested parties.)

Commissioner Gray: (To reporter) Make a note that the discussion was relative to the general conduct of the handling of this claim.

Mr. White, do you agree with the Deputy Commissioner that the claimant in this case has been more or less under medical observation for diagnostic purposes until the present time?

Mr. White: When Mr. Piatt returned to the hospital, on February 26th, I think, he was immediately notified both by Mr. Woelfert and also by the hospital; a representative of the hospital having inquired as to whether or not we were to stand the cost of the hospital confinement, that I agreed to assume the hospital expenses pending the making of a diagnosis or the arrival at a definite conclusion as to what relationship the [72] cause for the second confinement had to the accident of December the 1st. In that way we have paid all the hospital expenses throughout the second period. Dr. Cloward has made a fairly definite commitment with respect to the cause of relationship, which I have referred to, but I do not think that they are wholly satisfactory either from our point-of-view or from, certainly, Mr. Piatt's point-of-view, in view of the questions he has asked me personally, and the questions that were put in the record here.

Commissioner Gray: It is your feeling to have

a further medical examination in view; of probing into the situation, with a view of determining the conditions?

Mr. White: My personal feeling is this, after having contacted other people in whom I have a good deal of confidence, that we have not exhausted all of the avenues of research. For example, I think one thing that sticks in my mind as a layman is the fact that no X-ray has ever been made. Dr. Steward did not take any, and I could not find, in the hospital charges, where the hospital made one.

Claimant: There never was any taken. Dr. Cloward said he was going to, but he never did.

Mr. White: The working diagnosis in this case at present is cerebral thrombosis, which Dr. Cloward, in effect says is the result of high blood pressure, and to some extent arteriosclerosis, and which he feels has no relationship, either [73] in actual effect or in time chronology to the accident of December the 1st. In other words, it is a sort of accident, or stroke, which a man of Mr. Piatt's age is exposed to as a natural hazard of life. We cannot disregard either the immediate effect of the accident of December the 1st, and the ensuing disability.

Commissioner Gray: Have you paid Mr. Piatt any compensation yet?

Mr. White: No, and simply for the reason that I had to inform him, frankly, within a week or so after he went back to the hospital, that Dr. Cloward had informed me that he did not see any relationship between the two. On the other hand I did tell Mrs. Piatt, and I think she in turn told Mr. Piatt

that we would mark-time pending the investigation of the matter. For that reason, I think that we feel disposed to pay compensation from February the 26th until such time as a definite medical conclusion can be reached.

Commissioner Gray: I believe that the Carrier's representative's statement in this last respect is well founded, in view of the presumptions contained in Clause 20 of the Act, wherein it says that in any proceedings for enforcement of a claim for compensation under this Act it shall be presumed, in the absence of substantial evidence to the contrary, that the claim comes within the provisions of the act, and that sufficient notice was given, and so forth. I think until such [74] time as we do exhaust the medical possibilities that there is a reasonable inference here that the man is entitled to a replacement of part of his wages in the form of compensation; the period of disability will be considered more or less only for diagnostic purposes until we can get something definite. I think your statement in that respect is highly laudable, and it certainly is acceptable to the Commissioner.

Mr. White: I wonder if I could ask Mr. Piatt one thing?

Commissioner Gray: Yes, certainly.

Mr. White: Q. Mr. Piatt, it is pretty close to the time of your departure, and I do not know that we could work out the medical details here before you leave. In other words, I am no one to say it can be done in three days or four days. That

certainly would be a matter for a doctor to determine, but I am going to suggest to Dr. Cloward that it certainly would not be amiss to have a further examination by himself,—I mean by that a definitive examination, in consultation with a physician who has had no prior contact with your case, and is not concerned with you personally, nor with the financial end of the case in any way. If that could be done here in the Queen's Hospital before you leave, would you be willing to go back there for the purpose of that examination?

Claimant: Certainly.

Mr. White: If it, for any reason, cannot be done here without interrupting or interfering with your going to the Coast [75] at an early date, would you have any objection to stopping in, for example, San Francisco, at our expense, well, for the period of the examination? As I say, I can approximate but I cannot guaranty the length of time.

Claimant: How long do you think that would take, approximately?

Mr. White: I should think if you went into the hospital for two or three days they would certainly have ample opportunity to investigate all phases of it.

Commissioner Gray: Providing we got the information to them as soon as we know he is leaving, so that there will be no undue delay.

Claimant: I think that would be proper. I would be perfectly willing. I would probably like to rest a few days there before going north.

Commissioner Gray: If the examination is to be

had in San Francisco the deputy commissioner will forward the papers to Warren Pillsbury, who is located at 417 Market street, and I will suggest to him that at such examination they ask one of the analytical consultants of the Public Health to take part in the examination. in order to expedite matters and attempt to arrive at a definite finding.

Mr. White: I am perfectly agreeable to paying compensation from February 26th until such time as we reach a reasonable medical conclusion, which can be submitted to the [76] Deputy Commissioner for decision on the case as a whole, and in that connection, if the examination should be done in San Francisco, I would consider that Mrs. Piatt, because she is attending you, would also be there at our expense in connection with the examination. In other words, the examination won't cause you any financial loss through the delay there.

Commissioner Gray: For the record purposes, the Deputy Commissioner approves the action contemplated by the Insurance Carrier, as to the liability for compensation involved, as set forth in the preceding statement of Mr. White's, and if there is nothing further to be brought forth at this time we will adjourn until a further hearing to be held at such time as definite medical evidence is brought before the Commission.

I wish to officially inform you that your claim, as the law provides, lives during the period that you are being paid compensation and for one year thereafter; without the filing of any formal claim other than that which you filed. However, if you

change your address you are requested to notify both the insurance carrier and the Commissioner, and it is our recommendation, as you have done heretofore, that you cooperate in any steps that may be taken and assist in straightening out your case. Jurisdiction will be transferred subsequently to the appropriate deputy commissioner of the compensation district nearest to the point where you take up your residence on the mainland. [77]

Claimant: That will be San Francisco.

Commissioner Gray: We will probably transfer it to San Francisco, and subsequently to Mr. Marshall in Seattle, if you move to Oregon.

We will adjourn.

(Hearing concluded)

Territory of Hawaii

City & County of Honolulu—ss.

I, R. N. Linn, an official shorthand reporter of the First Circuit Court of the City and County of Honolulu, Territory of Hawaii, Do Hereby Certify, that the above and foregoing transcript, pages 1 to 66, inclusive, is a full, true and correct transcript of my shorthand notes taken in the within entitled matter, at the time and place aforesaid.

Dated: Honolulu, T. H., this 11th day of June 1943.

.....
 Official Circuit Court
 Reporter.

[Endorsed]: Filed Nov. 30, 1944, San Francisco. [78]

Howard C. Naefziger, M.D.

O. W. Jones, Jr., M.D.

Howard A. Brown, M.D.

384 Post Street

San Francisco, U.S.A.

June 23rd, 1943

Liberty Mutual Insurance Company,
Central Tower,
San Francisco, California.

Attention of Mr. Chandler.

Re: Mr. John Piatt.

Dear Mr. Chandler:

The above patient was hospitalized at the Franklin Hospital for observation and study. This patient is 55 years of age, married, and has been occupied as a civil engineer.

The patient states that he was quite well, although he was working very hard, until December 1st, 1942. At that time, a heavy glass chandelier fell and struck him on the vertex of the head. He was sitting in a chair at the time and was thrown forward but was not rendered unconscious. He felt somewhat dazed and sustained a slight scalp laceration. Following this, he had a headache which was troublesome. The patient was put to bed for about twenty-four hours, after which he attempted to resume work. At that time, he felt difficulty in concentrating, was somewhat nauseated, and complained of dizziness.

He was then seen by Dr. Ralph Cloward, of

Honolulu, who hospitalized the patient at that time. On the day of his admission, it was reported to him that his blood-pressure was 240/100. The patient states that that was the first time he had any knowledge of an increase in blood-pressure. He stated that Dr. Bulman, of Santa Rosa, had cared for him with a lobar pneumonia in 1937, and had told him at that time that his health was good. He states that in 1929 he passed a life insurance examination without difficulty. As far as could be determined, he had no definite knowledge of this hypertension prior to the above date.

He was hospitalized for about three weeks, following which he was sent home to bed for a week. During that interval, his blood pressure ranged from 170-190 systolic, according to his statement. He then returned to his work, and was feeling fairly well except for continual headaches, which persisted intermittently, and gave him a sensation of a constricting band over the top of his head to a point between the ears.

On the morning of February 26th, 1943, while shaving, he states, his legs buckled and he fell to the floor. He did not lose consciousness, but was unable to move the left arm and leg and face. His tongue was thick and his speech was very difficult. He states [128] that at that time he had an absolutely complete paralysis, and was unable to move the arm and leg in any way. He was immediately hospitalized under the care of Dr. Cloward, and at that time his blood-pressure was said to have been 200. Prior to this episode, the patient had noted no

difficulty in the use of his arms and legs. There has been a gradual improvement, particularly in the leg, since that time, but the arm has been very slow. He has received physiotherapy and has just now returned to the mainland. He plans to return to his home in Oregon for further convalescence.

In addition to the motor disturbance, there has been some sensory change and numbness, particularly noticeable in the left forearm and hand.

The patient further comments on the fact that he has been under terrific strain for the last three-and-a-half years. Since January, 1940, he has been under contract with the Navy, living and working in Honolulu as a civil engineer, and had directed numerous construction projects, which had demanded a great deal, both mentally and physically, according to his statements.

The patient recalls one other fact, and that is that three or four days before his paralysis appeared, he had had a "few transient spasms" in the left arm, hand and leg, as if the muscles would tighten up momentarily.

Family history: his mother is alive at 81. His father died at 84. No other familial illnesses.

Past History: the patient apparently had convulsions of undetermined origin when he was an infant. No recurrence subsequently. He had the usual childhood illnesses. Gc. in 1907. Pneumonia in 1937. Accidents: he had a multiple fracture of his left arm and forearm in 1899, but made a good recovery. He received a blow to the left elbow in June, 1942, and some numbness of the hand fol-

lowed that, but it cleared completely. Operations: appendectomy in 1909. Sinuses opened in 1917.

Systems: essentially negative.

Weight: average 190-200 lbs. at present about 186 lbs.

Examination: the patient is rather a large, moderately obese man, who seems oriented and rational. He is quite talkative, particularly with regard to his illness.

Head: negative to auscultation, palpation and percussion.

His general physical examination will be covered by Dr. Ernest Falconer, who is examining him at this time. His blood-pressure now is recorded as 188/88. [129]

I. Cranial nerve examination: Subjectively negative.

II. Visual fields and acuity roughly within normal limits. The fundi showed disc margins which were fairly well outlined. There was no evidence of increased pressure. The vessels showed some definite sclerotic changes.

III, IV & VI. Pupils and reactions normal. No extraocular palsies. No ptosis.

V. Motor and sensory negative.

VII. The patient has slight weakness of the left face, of the central type. Subjectively, taste is not disturbed.

VIII. Vestibular and auditory negative.

IX, X, XI & XII. Negative.

Cerebral lobe test: as noted, the patient shows

no disorientation at the present time. He has very little in the way of residual headache at present.

Motor power: the patient has a marked paralysis of the left arm, with very little motion, except in the shoulder girdle, where there is slight motion. He has no real ability to move the forearm or hand. The left leg functions fairly well, and he is able to get about although with some difficulty.

Sensory examination shows some hypesthesia over the left side of the body, most marked in the arm.

The reflexes are all quite hyperactive, the left side greater than the right. No pathological reflexes or clonus at this time.

There is a good deal of spasticity and joint stiffness, and it is impossible to move the fingers or wrist on the left side, very much, because of these factors, plus the pain associated with them.

X-rays of the skull show no sign of any fracture or other pathological change.

The urine shows a slight trace of albumen.

The blood count is within normal limits.

I have reviewed the file submitted, including the reports from Honolulu and the hospital records in this case. I have also discussed the matter at some length with Dr. Falconer, who has examined him from the medical standpoint. [130]

Discussion: this patient originally sustained a blow to the head without loss of consciousness, but with slight laceration of the scalp. He showed no evidence of any brain injury, according to Dr. Clo-

ward's report. There was no evidence of a fracture of the skull.

Following that, the patient had some head discomfort, which would not be unusual, considering his hypertension. However, he reached a point where he was able to return to work, and it was almost three months after the original blow to the head that the patient developed evidence of a definite cerebral vascular accident. I would agree with the previous examining physician that this represented a cerebral thrombosis secondary to his vascular disease and hypertension.

Considering the length of time that elapsed, following the blow to the head, plus the fact that this was a slight injury without evidence of any brain damage, I do not feel that there is any connection between the cerebral vascular accident occurring in February, 1943, and the head blow of December, 1942.

The patient very definitely shows the hypertension and vascular changes which are a causative factor in the cerebral thrombosis, and, in my opinion, this condition would have occurred regardless of whether the patient had a blow to the head in December or not.

Very truly yours,

HOWARD A. BROWN, M.D.

HAB/FM [131]

Howard C. Naeffziger, M.D.

Raymond J. Meitzel, M.D.

384 Post Street

San Francisco

Douglas 3266

June 23, 1943

Liberty Mutual Insurance Company

Central Tower

San Francisco, California

Attention: Mr. Chandler

Re: Mr. John Piatt

Dear Mr. Chandler:

The above patient was seen on June 23, 1943 at the Franklin Hospital in consultation with Dr. Howard Brown. Following is the report of my examination.

Family History: Mother alive and well at 80. Father died at 84. One brother died after abdominal operation. One sister died after appendectomy. One brother alive and well. No asthma, pulmonary tuberculosis, cardiac, renal diabetes, epilepsy or pernicious anemia in family history.

Past History: Born in Minnesota 1880. Had severe convulsions in infancy. Had usual childhood diseases, all mild.

Venereal Diseases: Neisser in 1907, treated by an M. D., no sequelae.

Operations: Appendix removed in 1909. In 1917 sinuses operated on, sphenoids and ethmoids? In 1937 patient had "double pneumonia" at Santa Rosa, was under care of Dr. Bowman.

Accidents: In 1899 had multiple fractures left arm and forearm, elbow joint badly smashed, left arm never regained complete strength. Left elbow injured again in 1942, numbness for one week.

Habits: Usual weight 190-200 lbs., present weight 186. Coffee 1x; tea 1x; drinks alcoholic liquors moderately; smokes 6-8 cigarettes, 1-2 cigars daily. Appetite good. Sleep fair. Nycturia 1x; bowels constipated. Has frequent "colds" usually in head. All teeth removed in 1932.

Complaints: 1. Paralysis, left arm. 2. Headache. 3. Numbness, left forearm and hand, four months' duration.

History of Present Illness: Patient states he was well up until December 1, 1942. He was employed as an engineer in the Hawaiian Islands at this time, and, on that date as he was sitting at his desk, a glass chandelier above him fell and struck him over the vertex of the head. States he was not knocked out but was dazed. Received a scalp wound. Was put to bed for twenty-four hours after which he attempted to return to work. He was unable to concentrate and felt nauseated, also dizzy. Was referred to Dr. R. B. Cloward, a [132] neurological surgeon, who hospitalized patient on December 3, 1942, at Queens Hospital. Patient states that on the day of entering hospital his blood pressure was 240/110. He states this is the first time he knew he had a hypertension. Dr. Bowman, who looked after patient at Santa Rosa when he had pneumonia in 1937, told him at that time

after recovery from the pneumonia that his general health was excellent. (This is patient's version.)

He remained in the hospital for three weeks, then returned home, remaining in bed for one week. During this time his blood pressure ranged from 170 to 190 systolic. Patient resumed work after one week at home and states he felt well except for headaches. On February 26, 1943 while shaving in his bath room, at home, his legs "buckled" under him and he sank to the floor. He did not lose consciousness but could not move left arm and leg. He was immediately hospitalized again at Queens Hospital, Honolulu under Dr. R. B. Cloward. Blood pressure on admission, he states, was 200. Since February he has received physiotherapy and there has been a gradual return of motor power in left arm and leg, the latter returning first.

When patient was confined to the Queens Hospital, Honolulu, after his left hemiplegia, the case record from this hospital shows that he had a left facial paralysis, thick speech, paralysis of left arm, paresis of left leg. Babinski on the left. On February 27, 1943, there was some movement of left arm, and left leg was stronger.

During the first three weeks of his hospitalization he ran a low grade fever reaching as high at 100 F.° at times. He was discharged on March 27, 1943. The urine examination, February 27, 1943, showed a trace of albumin, 8-10 white blood cells and 8-10 red blood cells. The blood count, February 27, 1943, was Hemoglobin 101.3%, red blood cells 4,980,000, white blood cells 8,100, neutrophils

71%, lymphocytes 28%, monocytes 1%. Dr. Cloward's diagnosis on the hospital record was: "Cerebral arteriosclerosis with small thrombosis anterior limb of right internal capsule, involving the anterior lateral nucleus of the thalamus."

Physical Examination: Patient is lying comfortably in bed. He appears somewhat overweight and obese. Face somewhat pale and cyanotic appearing. Hair is brown, oily, medium coarse texture. Scalp shows seborrhoea. Small superficial scar over upper frontal region behind hair line. Skull shows no depressions or tender areas. Eyebrows heavy.

Eyes: There are no ocular muscle palsies. Lower lids show bilateral conjunctivitis. Pupils somewhat irregular in outline, react to light and distance.

Ears: Slight bilateral diminution of hearing.

Nose: Left passage enlarged by previous nasal (septum and turbinate) operation. The mucous membranes of both nasal passages are congested.

Mouth: Lips are cyanotic. Teeth are out in upper and lower jaws, replaced by plates. Tongue is pale, flabby, coated. Tonsil stumps are ragged.

Glandular System: No enlarged nodes made out. The thyroid gland is palpable, the lobes are soft, elastic, no adenomatous nodules felt. [133]

Vessels: The superficial arteries are palpable, somewhat thickened. Radial pulses are equal, synchronous. Blood pressure 190/122.

Heart: The borders of cardiac dullness are slightly increased to the left on percussion. The P.M.I. is not seen but is felt in the 5th and 6th

interspaces 12.5 c.m. from the M.S.L. Over the lower precordium the heart sounds are well heard. The first sound is accentuated. At the base A2 is high pitched and accentuated. No murmurs heard at the base.

Chest: Well developed, well clothed. Emphysematous in type. On percussion the chest is resonant throughout. The breath sounds are roughened over the scapular areas. On coughing and deep breathing no rales or crepitations are made out.

Abdomen: Prominent. Liver edge is palpable at the costal border upper right quadrant. The edge of the liver is slightly tender on palpation. The sigmoid portion of the colon is tender. The abdomen is distended. Spleen and kidneys not felt. No masses. No shifting dullness in flanks.

Extremities: The left elbow joint is deformed from a former accident and operation. There is a scar over the dorsum of the left wrist. Lower extremities show slight edema.

Reflexes: The left facial paralysis has disappeared. Left side of face moves well. The left arm has very little power of movement. He cannot move forearm or hand. The left leg can be moved but is spastic. The deep reflexes are hyperactive, greater on the left than right.

Discussion and Opinion:

This patient sustained a moderately severe head injury on December 1, 1942. There was no loss of consciousness, no skull fracture, no evidence of

any brain injury. He had rather protracted symptoms after the head injury due to his age and the fact that he has cerebral arteriosclerosis and hypertension.

Patient returned to his work, and, almost three months after his head injury, he suffered a thrombosis of a cerebral vessel, diminishing the blood supply to certain centers in the brain that control the muscular movements of face, arm and leg on the left side of the body. Cerebral thrombosis means that a clot forms inside a cerebral vessel. I do not see any possible connection between the formation of this clot inside a cerebral vessel and his head injury nearly three months before.

He has evidence of arteriosclerosis in the fundi of the eyes, also in the kidneys as his urine shows constantly a small trace of albumin.

On account of his hypertension his future is uncertain and he will be a candidate for future trouble of the type he is now suffering.

ERNEST H. FALCONER, M.D.

EHF:rfm [134]

[Title of Commission and Cause.]

COMPENSATION ORDER
AWARD OF COMPENSATION

A claim for compensation having been filed in the Pacific District and a hearing having been held in Honolulu, Territory of Hawaii, before Deputy Commissioner Gray, and the matter having been transferred to this, the Fourteenth Compensation District, by authority of the Commission for such further action as might be indicated, and such further investigation having been made as is considered necessary and no additional hearing having been requested by the parties,

The Deputy Commissioner makes the following

FINDINGS OF FACT:

That on the 1st day of December, 1942, the claimant above named was in the employ of the employer above named at a place within the Pacific District, established under the provisions of the Longshoremen's and Harbor Workers' Compensation Act, as extended by the Act of August 16, 1941, as amended (42 U.S.C., Sec. 1651), to employees of contractors with the United States, and others, employed outside of the United States, and that the liability of the employer for compensation under said Act was insured by the Liberty Mutual Insurance Company;

That on said day claimant herein while performing services for the employer sustained personal injury resulting in his disability while employed

as a procurement agent; that while so employed and working at his desk an electric light reflector shade fell and struck the claimant's head, causing injury and resulting in his disability;

That the employer had knowledge of the said injury; [136]

That the employer furnished claimant with medical treatment, etc. in accordance with section 7 (a) of said Act;

That the average annual earnings of the claimant at the time of said injury were in excess of the maximum provided by the Act;

That as a result of the said injury the claimant was wholly disabled from December 1, 1942, to and including January 10, 1943, and from February 26, 1943, to and including November 18, 1943, and he is entitled to 43 6/7 weeks' compensation at \$25.00 per week for such disability or \$1,096.43; that on November 19, 1943 the total disability of the claimant resulting from the said injury continued;

That the employer and insurance carrier have paid to the claimant \$546.43 as compensation;

Upon the foregoing facts the Deputy Commissioner makes the following

AWARD:

That the employer, Contractors, Pacific Naval Air Bases, and the insurance carrier, Liberty Mutual Insurance Company, shall pay to the claimant compensation as follows: \$1,096.43, covering

to and including November 18, 1943; that the employer and insurance carrier shall have credit on this award for \$546.43; that subsequent to November 18, 1943 the employer and insurance carrier shall pay compensation to the claimant bi-weekly at the rate of \$25.00 per week during the continuance of the said disability; that the total compensation payable under this award shall in no event exceed \$7,500.00.

Given under my hand at Seattle, Washington, this 29th day of November, 1943.

WM. A. MARSHALL

Deputy Commissioner, Fourteenth Compensation District. [137]

PROOF OF SERVICE

I hereby certify that a copy of the foregoing compensation order was sent by registered mail to the claimant, the employer and the insurance carrier at the last known address of each as follows:

Mr. John D. Piatt, 176 Lincoln St., Ashland, Ore.

Contractors, Pacific Naval Air Bases, P.O. Box 857, Oakland 4, Calif.

Liberty Mutual Insurance Company, 703 Market St., San Francisco, Calif.

C. F. White, Atty. at law, Honolulu, Territory of Hawaii.

John C. Gray, Deputy Commissioner, U. S. Em-

ployees' Compensation Commission, 407 Hawaiian Trust Bldg., Honolulu, T. H.

WM. A. MARSHALL

Deputy Commissioner.

Mailed November 29, 1943. [138]

CERTIFICATION OF RECORD

Re: Liberty Mutual Insurance Co. vs. Marshall and John B. Piatt, Cause No. 851.

This is to certify that the following are a portion of the record in the above case:

Transcript of record of a continued hearing held before Deputy Commissioner Gray at Honolulu on June 30, 1944, consisting of 28 pages.

Insurance Carrier's Exhibit A, Parts 1 and 2, being photostatic copies of hospital records in this case.

WILLIAM A. MARSHALL

Deputy Commissioner 14th
Compensation District

Seattle, Washington, August 30, 1944.

[Endorsed]: Filed Sep. 6, 1944. [139]

[Title of Commission and Cause.]

TRANSCRIPT OF TESTIMONY

Before John C. Gray, Deputy Commissioner, Pacific District.

Pursuant to oral stipulation, the above entitled matter came on for an adjourned hearing before

John C. Gray, deputy commissioner, United States Employees' Compensation Commission, at Honolulu, T. H., on the 30th day of June, 1943, at 2 p.m.

Appearances:

C. F. White, Resident Manager, Liberty Mutual Insurance Company, on behalf of the respondents.

Reported by: Carey S. Cowart, Certified Short-hand Reporter, Honolulu, Hawaii. [141]

Comm. Gray: This is an adjourned hearing in the case of John Piatt, agreed to by stipulation of the claimant and of the employer and carrier, under public law 208, with respect to certain reports pertaining to the medical attention given by Dr. Cloward. Personal appearance having been waived by the claimant, proceedings came under the purview of public law 208.

Are you ready, Mr. White?

Mr. White: Yes, sir.

Comm. Gray: Dr. Cloward, will you be kind enough to state your name and address to the reporter for the purpose of the record?

Dr. Cloward: Ralph B. Cloward, 388 Young Hotel, Honolulu.

Comm. Gray: Will you kindly rise and be sworn?

RALPH B. CLOWARD, MD,

being first duly sworn, testified as follows:

Comm. Gray: Do you want to qualify the doctor?

Mr. White: Yes.

(Testimony of Ralph B. Cloward, M.D.)

Comm. Gray: I think it may be well under the circumstances.

Mr. White: I was going to ask Dr. Cloward, in view of the absence of the claimant, and patient, if he would be so kind as to state his qualifications of the record. That is, as to your formal education.

A. Doctor of medicine, graduate of Rush Medical College [142] in 1934, with five years post-graduate training in my speciality.

Q. (By Comm. Gray) Which is what, Doctor?

A. Neurology and neuro-surgery.

Q. (By Mr. White) Are you a duly licensed practitioner in the Territory of Hawaii?

A. Licensed by the Territory of Hawaii October, 1938.

Q. Dr. Cloward, will you state whether or not you have ever attended Mr. John B. Piatt.

A. Yes, I have.

Q. Can you state the approximate date and the purpose for which you were called?

A. I have more or less attended Mr. Piatt since the first week in December, 1942. December 3, 1942. This is the hospital record. And my last connection with him was—Do you know when he was discharged from the hospital, his date of discharge?

Q. I believe the record indicates Mr. Piatt was last discharged from the hospital on May 5, 1943.

A. May 5. I haven't examined him since his discharge from the hospital.

Q. Dr. Cloward, will you state for what injury or purpose you were first called to attend him?

(Testimony of Ralph B. Cloward, M.D.)

A. I first saw the patient——

Mr. White. Pardon me. Mr. Gray, will there be any objection to Dr. Cloward refreshing his memory from his own written notes? [143]

Comm. Gray: Not a bit. We have a copy of them. I can get them from the record here, Mr. White, if it is all right. Will you furnish a copy of your reports submitted by Dr. Cloward to the Commission in order that they may be forwarded with the record?

Mr. White: Yes, sir.

A. I first saw the man about an hour after his admission to Queen's Hospital on December 3, 1942.

Q. (By Comm. Gray) You are now referring to the Queen's Hospital reports, are you, Dr. Cloward? A. Yes.

Comm. Gray: Which previously have been inspected.

A. There is no record of my having visited him in this record, but I recall of having examined him about an hour after he was admitted to the hospital.

Q. (By Comm. Gray) The records you are now looking at are records that have been subpoenaed from the Queen's Hospital?

A. I referred to them as the date on which I saw him.

Q. (By Mr. White) Doctor, this is purportedly a copy of the record from which this copy was also made. A. Yes.

Q. It may be a little more convenient for you to have before you. Will you state what his physical

(Testimony of Ralph B. Cloward, M.D.)

condition was at the time you first saw him, what you treated him for?

A. On the first examination the patient was perfectly [144] conscious. He was in an extremely nervous state, trembling, perspiring profusely, and when attempting to talk his voice quivered. And he gave me a history that he has been sitting at his desk when a large chandelier came loose from the ceiling and had fallen, he said, approximately eight to twelve feet, and striking him on top of his head, and the chandelier bursting into a million pieces.

Q. The description of the fallen object as a chandelier was given to you by the patient?

A. Yes. That is what he told me at that time.

Q. I understand you to say that he also gave you the history that it had fallen a distance of—how far?

A. Well, he told me it was approximately eight to ten feet.

Q. Eight to ten feet?

A. As far as he could ascertain.

Q. What evidence of injury did you find, if any, Doctor?

A. On his examination, the most striking thing about his examination was that of extremely high blood pressure, which as I recall was somewhere around 240 or 230 over 140. That initial blood pressure we felt was probably due to primary hypertension that the patient had prior to his injury, although we attributed some of it to the extreme

(Testimony of Ralph B. Cloward, M.D.)

nervous state that he was in on his admission to the hospital.

Examining his head, there was no very extensive wound [145] about his head that would look as though he had been struck by any heavy object. There was no large bump, swelling or bruise or contusion that I could find. The following day, however, there was a small crust found in his scalp from a scratch which he may have got from a cut from glass.

The remainder of his examination was entirely negative, and purely from the story and not the examination of his nervous system we made a tentative diagnosis of concussion of the brain.

Q. You say that was purely from his story, rather than any objective findings?

A. Yes. Diagnosis of concussion very frequently has to be made purely on history rather than findings, because if a concussion of the brain is not severe enough to render a patient unconscious it is usually not severe enough to bring about any other change in the brain that we can demonstrate by our neuro-logical examination.

Q. Doctor, I understand you have to make an examination, however, to determine whether or not there were any objective rather than symptomatic evidences of a concussion?

A. Yes. That is routine procedure in all my head injuries. I go over them carefully from a neurological standpoint to determine what the status of their intercranial damage is, and if we find noth-

(Testimony of Ralph B. Cloward, M.D.)

ing in that examination then our diagnosis is made purely on history. If the patient has been struck and has been dazed for a few minutes and come out of it and has a headache [146] that is sufficient to make a diagnosis of mild concussion of the brain without clinical findings on examination.

Q. Doctor, will you explain for the record what is meant by a blood pressure of 230 over 140?

A. Well, that blood pressure in any individual would be called a primary hypertension. By that we mean that certain changes have to take place in an individual's arteries to bring about changes in the pressure of the blood. That is the force with which the heart beats. We measure blood pressure by the systolic and diastolic measurements, the systolic being the first number, and in this instance was 230. Now an elevation in the systolic pressure can be brought about by emotional changes in the individual, fear, anger, and extreme apprehension, and all elevate the systolic pressure. The diastolic pressure, on the other hand, or the second figure, which on admission was around 130, which normally is between 80 and 100, this pressure is usually dependent on the condition of the peripheral arteries, that is the arteries in the body. Those arteries are normally small and the heart has to push harder to get the blood through the small arteries, and that causes a rise in the diastolic pressure.

Q. Dr. Cloward, assume that Mr. Piatt's approximate age is 54 to 55 years; on the basis of his

(Testimony of Ralph B. Cloward, M.D.)

blood pressure on admission to the hospital on December 3 was his diastolic pressure abnormal?

A. Yes, his diastolic was definitely abnormal, that of [147] 130, whereas the normal diastolic in such an individual would be 80, 90, to 100.

Q. I believe your reference to the record a few months ago indicated diastolic pressure of 140, rather than 130. Is there enough difference—

A. Yes, the diastolic was 140.

Q. On the rule of thumb it should have been approximately 150 to 155?

A. That is the diastolic. The diastolic is 130. That is the second figure. The systolic was 240. I should say the systolic was 230.

Q. (By Comm. Gray) Above the average, is it, Doctor?

A. The normal blood pressure will run 120/80. That is supposed to be considered normal.

Q. Approximately 120 plus his age?

A. They say 100 plus his age. If a man is 54 and he has a blood pressure of 154, that is about normal.

Q. You allow 10 to 15 percent for emotional disturbance or climbing up stairs?

A. It depends entirely on the individual, Mr. Gray. The fluctuation of different individuals' blood pressure varies according to their emotional stability. Some individuals may be extremely emotional and a sudden upset in their emotions may shift their blood pressure 50 or 60 points.

Q. Take the average individual coming into see a doctor. [148]

A. Yes.

(Testimony of Ralph B. Cloward, M.D.)

Q. Reducing it down to a quotient, that normal person, ten or fifteen points——

A. Ten or fifteen points, such a normal person, if you put them down on their back and let them rest and relax for ten or fifteen minutes, that ten or fifteen points will drop down to pretty near normal.

Q. (By Mr. White) Dr. Cloward, did Mr. Piatt's blood pressure become normal or anywhere near normal? A. Yes, it did.

Q. Subsequent to the date of his admission?

A. After his admission—I don't see any record of his blood pressure one week after his admission. But ten days or so after he was admitted the nurse reports a blood pressure of 143/80, 160/100, and those pressures——

Q. (By Comm. Gray) Will you try to answer the question, please?

A. Those blood pressure could be expected in a person with a primary hypertension after being flat on his back in bed for a period of a week or ten days.

Q. During the period that he was on his back ten days or twelve days, Dr. Cloward, was he administered certain sedatives? A. Yes, sir.

Q. And other treatment that might tend to reduce the [149] blood pressure to normal?

A. Rest and inactivity are much more important factors in reducing the pressure than drugs or medicines. And keeping him flat on his back and giving him a sedative to sleep well at night, and relieving

(Testimony of Ralph B. Cloward, M.D.)

pain, if any, was all that was done for him and his blood pressure came down to this level. Of course we know external environmental conditions that would change the emotional or let the emotional factor interfere with his blood pressure.

Comm. Gray: Mr. White, do you object if I ask another question, with intent to bring out the facts?

Mr. White: I would like to finish my direct examination.

Comm. Gray: Go right ahead. I hope you can shorten this because the Doctor, I know, is a very busy man.

A. That is all right. Take all the time you need. I have my case scheduled for four o'clock.

Q. (By Mr. White) Doctor, I notice that on the first few days of treatment in the hospital Mr. Piatt was apparently administered mambutal.

A. Yes.

Q. What was the purpose of that medication?

A. The mambutal is usually administered chiefly for sleep, and with patients as extremely nervous and apprehensive as Mr. Piatt was on his admission to the hospital initial orders [150] on the date of admission included one capsule of mambutal to be given at night for sleep and repeated once if necessary, that is, if he couldn't sleep.

Q. The intention of that drug was simply to put the patient at ease so that he could get his rest?

A. Yes, and sleep at night.

Comm. Gray: Incidentally, are we talking about the first visit of Mr. Piatt?

(Testimony of Ralph B. Cloward, M.D.)

Mr. White: This is all at the first visit in December.

Comm. Gray: Let it be understood we are now discussing the first visit of the patient to the hospital under the attention of Dr. Cloward.

Q. (By Mr. White) Incidentally, Dr. Cloward, how long was the patient in the hospital on the occasion of his first period of hospitalization?

A. From December 3 to December 24; that is 21 days or 3 weeks.

Q. After his admission to the hospital did any abnormal development occur?

A. No, nothing whatsoever. As I recall, he complained of mild headache for the first few days, after which his symptoms disappeared. He still showed signs of apprehension and nervousness, but if I recall right at the end of a week or ten days he was quite anxious to go home. [151]

Q. Was there at any time an elevation in his temperature such as to produce unusual complaint?

A. For the first two weeks.

Q. (By Comm. Gray) What was the reason that he was discharged by ambulance, Doctor, when he left the hospital the first time?

A. Was he? I didn't recall, Mr. Gray, that he was discharged by ambulance.

Q. That is what the record shows.

A. Oh, yes. That is right. "Home by ambulance." I don't remember specifically. It was not on my order. It was probably on the patient's request.

(Testimony of Ralph B. Cloward, M.D.)

Q. In the face of his being discharged by ambulance would you consider that he had fully recovered from the effect of his claimed injury?

A. Well, we very frequently send patients home by ambulance that are completely well, if they have no other means of transportation.

Q. In other words, is that a matter of meeting the whims of the patient?

A. That is right. It wasn't that I felt his condition was such that he had to go home by ambulance. As a matter of fact, I was ready to discharge him at the end of the two weeks period and we kept him in the hospital an additional week at his request. I think we let him sit up about the twelfth or thir- [152] teenth day after his admission, and then he developed an infection in one of his fingers and ran a little fever with this infection.

Q. Was it the finger or the back, Doctor? Didn't you take a biopey, a little speciman from his back?

A. Yes. He had a little skin tag on his back and he asked me if I would clip it off for him, and I clipped that off one day. He had an infection in his finger, which I thought perhaps was the cause of this elevation in temperature and we had that finger wrapped up and dressed with some alcohol and glycerin, I think, something of the sort, on the thirteenth.

Q. Would you consider that a side issue, more or less coincidental to the treatment of any patient that might be worrying about a lot of trouble?

(Testimony of Ralph B. Cloward, M.D.)

A. Yes, but the generalized influence that this minor infection and rise in temperature had on the man was all out of proportion to the seriousness of the condition, which we passed off as being due to the man's particular personality. That is, he got this little rise in temperature, he became chilly and perspiring, and then along with it he became extremely nervous, shaky and jittery, and he couldn't stand to have anybody touch him and he hollered and yelled at the nurses and carried on like that for two or three days.

Q. Did he actually have a cerebral episode, probably due to this thing hitting him on the head?

A. At this time, do you mean? [153]

Q. Had he had a condition, drawing it along towards a cerebral episode, do you think that this chandelier falling on his head might have accelerated or brought it forward more quickly than otherwise might have happened, the fact that he had the blow on his head?

A. We couldn't have determined that during his first stay in the hospital. In view of his subsequent history there was nothing in his first admission to the hospital, either in his examination, his clinical course, that would lead us to believe that anything was going to happen in the future as it did.

Q. How about the second one?

A. That is an altogether different story.

Q. He was brought back into the hospital a second time?

A. Some months later, yes.

(Testimony of Ralph B. Cloward, M.D.)

Q. Did your observation of him on the second visit tend you to form perhaps a more broader opinion after observation of him, a different opinion than that which you had formed on his first admission?

A. In reference to the severity of the injury to his head?

Q. I say the casual relationship, that existing condition, and the history of accident as it had been brought out.

A. No, it didn't cause me to change my impression at all. As a matter of fact, when I first examined him on his first admission and recognizing the nature of the changes in his brain that had brought about this condition, it didn't once enter my mind that this injury he had had several months previously might [154] have contributed to it, at the time, until some weeks later, when the patient himself brought up to me the fact that he thought the scratch on his head had made him paralyzed.

Q. What do you mean by the examination of his brain, Doctor?

A. As I stated, on first admission any patient who has had any trouble with his head, we do what we call a neurological examination. That is an examination to determine the function of the different parts of the brain and all the nerves in the body, to see if any of them are not functioning properly, or if all of them are functioning normally. And in such an examination we can determine that the part of the nervous system that has ceased to

(Testimony of Ralph B. Cloward, M.D.)

function or that the function has altered, and in this particular patient we were faced at first with a partial weakness or paralysis of his left side.

Q. (By Mr. White) Doctor, what period of hospitalization are you referring to?

A. This is No. 2 that he asked me about.

Q. No. 2

A. Yes, sir. At this time the patient was admitted on the 26th of February.

Q. On the date of his first admission were there any neurological signs?

A. None, as I said. I think none whatsoever, and on his discharge from the hospital there was none, on the 24th of December. [155]

Q. (By Comm. Gray) Pardon me just a moment. Dr. Cloward, what caused you to make the neurological examination then on the second admission if you found that on his admission results were entirely negative?

A. I don't get your question, Mr. Gray.

Q. What I am trying to get at is this.

A. We examine all these patients.

Q. Here we have a man, according to the evidence that is in the record, and I think Mr. White will agree with me, we will leave the distance out, that the globe fell and struck him on the head and shortly thereafter he became disabled; he entered your hospital, he was in there for a certain length of time and then was discharged; he held several conferences with some difficulty, as the record will

(Testimony of Ralph B. Cloward, M.D.)

show, consulting with these people and trying to straighten out his work, and then re-entered your hospital. Now, all I am interested in is simply this. A workman has an object strike him on the head; apparently he has some indefinite, indiscernible condition existing; we have a record that prior to the time that the globe fell on him that he was one of these individuals who worked hard, long hours, giving the best that he had to the job; following this he became pau, finished, he was unable to work. All I am trying to do is to find out whether or not medically there was any causal relationship between the condition that followed after this blow and the underlying pre-existing condition. Frankly, that is my position.

Mr. White: I think Dr. Cloward answered that a few [156] minutes ago when he said that on the occasion of Mr. Piatt's second admission to the hospital his condition was different.

Comm. Gray: Unfortunately, Dr. Cloward was not in a position to either see or know of the characteristics of the individual prior to the time he was injured. He is simply going on his medical observation of the man, which is perfectly all right. We want the medical opinion.

The Witness: And the story that the patient gave me.

Comm. Gray: He observed him twice. All we are anxious to do is to obtain Dr. Cloward's testimony as an expert as to the possible causal relation, where a man had been working and demonstrated an

(Testimony of Ralph B. Cloward, M.D.)

ability to work prior to this accident, and what happened to him afterwards.

A. Anyone who sees a person once or twice a day for a period of five or six months can get a pretty broad impression of the individual's personality or characteristics.

Comm. Gray: We admit that.

A. Other than just the medical position. And I very soon formed an opinion of Mr. Piatt's personality. I could see that he was what the psychiatrists term manic depressive. These individuals have definite swings in their mood. At one time they will have tremendous drive, a tremendous amount of force to go ahead and do their job, and something happens to them and the next minute they are clear down in the depths of depression and they won't move off of their seat. That was the impression of Mr. Piatt's personality that I got during the period I took care. [157]

Q. (By Comm. Gray) You have handled thousands of these cases, have you, Doctor?

A. I imagine so, in ten years. Your direct question as to what I considered the causal relationship between this injury and his subsequent paralysis—

Q. That is the question.

A. Yes. My impression is this, entirely in a nutshell. I don't think that we could say positively, one way or the other, that the injury to his head caused his paralysis, but from experience—

(Testimony of Ralph B. Cloward, M.D.)

Q. Even for a temporary period, we will say? For a period of what you would nominally consider the necessity of getting over the result of a concussion that he had?

A. Yes. From our knowledge and experience of diseases of the brain and things that cause paralysis, we recognize that changes in the brain can bring about the picture such as Mr. Piatt had. Any paralysis that is brought on by an accident to the head will come in two ways. Either it will come immediately at the time of the injury, and that paralysis is either due to a fracture of the skull, with destruction of the part of the brain that moves the extremities, or is due to a very rapid loss of blood inside of the head that presses on the brain. Paralysis of that type will come on immediately or within a period of a few minutes or hours after the injury. That he didn't have. The second type of paralysis that a person can get following a head [158] injury is due to a slow gradual accumulation of blood on the outside of the brain. With such paralysis the individual gradually over this period loses the function of his extremities. It does not come on suddenly; it comes on slowly. He will get awkwardness of his hand, his hand will get heavy; every day it gets a little weaker and weaker and weaker, and over the period of weeks—I think the longest case I ever had was two months—he becomes completely paralyzed on that side.

(Testimony of Ralph B. Cloward, M.D.)

Those are the only two types of paralysis that you can get by an injury of this type.

Q. It applies in this case?

A. I say those are the only two types of paralysis you can get following an injury to the head. If an individual goes from the time of his injury two or three or four or five months and then suddenly, out of a clear sky, develops a paralysis of his extremity, in the intervening period being perfectly well and showing no signs of paralysis, then the conclusion, I am sure, would be of all neurologists that he has had a second lesion. By that I mean a condition has arisen separate and apart from his original injury. And that was my impression of Mr. Piatt.

Q. Gradual weakening of the blood vessels being one thing?

A. No. I mean a separate condition altogether, a separate diagnosis. Between Mr. Piatt's discharge from the hospital and his second admission, from the neurological standpoint he was [159] perfectly normal. I examined him, I think, two or three times in my office and the only thing I found on these examinations was again his extreme nervousness and the elevation in his blood pressure, which was always in the office around 190—180 to 90 systolic. This accident came on very suddenly, as he told me the next day. He was standing in his bath room, ready to shave, and his left side became weak.

(Testimony of Ralph B. Cloward, M.D.)

Q. That was February 26?

A. Yes, the 26th of February. Two months after he was discharged from the hospital. His left leg became weak; he fell to the floor. When his wife rushed in to pick him up his left side was completely paralyzed. The condition bringing about that paralysis was something that hit him suddenly and knocked out the function of that part of his brain. We recognize a sudden paralysis like that; it is called a vascular accident. Why "accident" I don't know. But it is usually due to one or two things: either a blood vessel in the brain ruptures or it becomes plugged up.

Q. Naturally there is an unexpected and untoward and unexplained condition.

A. That is a medical term—cerebral vascular accident—and it has nothing to do with trauma. Well, with this history and the findings of the weakness of his extremity that became completely paralyzed in the next few hours it was my impression that he had a cerebral accident, probably secondary to his high [160] blood pressure and having no relation whatsoever to his previous accident or previous injury.

Q. Let me ask you a question. Up until February 25 would it be reasonable to attribute any disability prior to February 26, the day that you saw him the second time, to the concussion as a matter of a temporary total disability due to his original injury?

(Testimony of Ralph B. Cloward, M.D.)

A. Disability from a concussion of the brain would necessarily have to include organic symptoms from injuries to the brain and functional symptoms of injury to the individual's personality and emotions. He didn't complain of headaches appreciable, dizzy spells, or things of that sort, that we hear patients complain of that have had a concussion of the brain. He was extremely nervous and high strung and jittery, and during the period, as was demonstrated by his blood pressure, and every time he would come into the office he would give us the same picture of the individual. Any disability from his first injury until he had this second accident I would say would probably be on an emotional basis rather than organic basis.

Q. But it might reasonably be attributed——

A. Yes.

Q. ——to the inception of the injury?

A. Yes.

Q. Now, after you observed him on the 26th and subsequently, would you care professionally to state in your best knowledge as an expert in neurological cases that the disability beyond [161] February 26, in your opinion, was not causally related to the minor blow that he received to his head?

A. Do you want me to answer that without any conditions whatsoever.

Q. No. You can qualify it, Doctor.

A. I said in the beginning that I didn't think

(Testimony of Ralph B. Cloward, M.D.)

any neurologist could say positively that an injury to the head, as minor as this seemed to be, might not in some way be related to subsequent changes that went on in his brain.

Q. What is its possibility and probability?

A. Well, it is possible but it is probably more probable.

Q. More probable. Considering the condition of the man and the underlying condition?

A. His underlying condition being his high blood pressure due to pre-existing changes in the arteries of his brain. If one of these arteries suddenly becomes plugged up, the brain that artery supplies is deprived of its blood supply and ceases to function. I don't know whether a person could say that plugging up was due to the blow he got on the head three months ago or not. My personal opinion would be that it had no relation to it whatsoever. I don't know what else I could say.

Our diagnosis of this second vascular accident was a thrombosis. In these hypertension cases there are two things that happen. Either a blood vessel breaks open and throws an unusual amount of blood into the brain and the brain loses its [162] function from the collection of blood, or one of the arteries gets plugged up.

Q. A blow of that kind, which you received a history of, would have been more probable to have made him susceptible to such a thrombosis?

Mr. White: I think the Doctor answered that

(Testimony of Ralph B. Cloward, M.D.)

question a few minutes ago, Mr. Gray, in answer to an equally general question.

Comm. Gray: All I am trying to do is get the facts. Here we have a man, as I understand it from the record, had been performing his work in more or less a normal state; an accident intervened and he has two occurrences, as we see them. The one was of a temporary nature; he returned to work and attended certain conferences, as the record will show, under difficulty. In fact, they cut the conferences short because of his apparent distress. Then his wife goes in and finds him in the bath room apparently in the throes of a paralytic state, and he is returned to the care of a doctor. Purely a medical question.

Mr. White: The doctor has already said that it is not.

Comm. Gray: I have to depend upon the Doctor's professional knowledge, and what I am trying to do, on the basis of his professional knowledge, is to determine the possibility or the probability of the second occurrence being related to the first occurrence.

Mr. White: He has already said in his personal opinion there is no relation. [163]

Comm. Gray: I have to determine it in the final analysis and I can only determine it on the basis of the advice that the doctors give to me. I am not trying to sway the Doctor's opinion; I am trying to find out what he thinks about it.

(Testimony of Ralph B. Cloward, M.D.)

Mr. White: May I interject a question?

The Witness: I said that in my opinion there would be no relation between the two, even though it seems like to to the layman. But from the pathological standpoint, that is, conditions in the brain that produce these different pictures, the one is not a part or parcel of the other.

Q. (By Comm. Gray): In other words, had there been no accident it may have followed in normal course? A. That is right.

Q. But with an intervening accident can you deny that the accident did not have any connection with it? A. No, I cannot deny it.

Q. Is there a strong possibility that the accident did have something to do with it?

A. I wouldn't say there was a strong possibility.

Q. Reasonable possibility?

A. I think it is very slight.

Q. I am not trying to lead you on.

A. If I had realized that this case was going to cause so much controversy—at the time it did not enter my mind that there would be any connection between this minor crack he had on his head and this vascular accident that we see in a large percent- [164] age or many people normally his age—I might have even attempted to open up the man's skull and take a look at his brain, to see what happened to it.

Q. But you did not do that?

(Testimony of Ralph B. Cloward, M.D.)

A. No, sir, I did not. I didn't see that it was indicated, because people who have these vascular accidents there is usually nothing you can do for them surgically. Once the damage is done nobody can repair it. If this blood vessel has a cork in it there is nobody can find that cork and take it out; by the time you would get in there and could find it it would be too late.

Comm. Gray: In fairness to you, Doctor, I think we have arranged to have a subsequent examination. Haven't we agreed on that?

Mr. White: Yes.

Comm. Gray: The whole thing is not to embarrass you.

The Witness: I have tried to bring out the different medical pictures that can produce these conditions.

Comm. Gray: Your instructions to us have been invaluable. Go ahead, Mr. White.

Q. (By Mr. White): Doctor, one of the witnesses at the prior hearing testified to a purported conversation with you, which was alleged to have occurred about December 13 or 14, in which you were alleged to have used the words "blood clot."

Comm. Gray: In the presence of the claimant's wife, I believe. [165]

Q. (By Mr. White): In the presence of the claimant's wife and a nurse. Was there at any time anything in your observation of the case which suggested a blood clot?

(Testimony of Ralph B. Cloward, M.D.)

A. On the first admission?

Q. Yes.

A. No, there was none whatsoever. If I made some statement to the wife or the nurse that I thought this man had a blood clot in his brain it was certainly done unintentionally.

Q. (By Comm. Gray): That is a possibility, isn't it, at any time, if a man has a vascular accident?

A. This was the first admission, after the crack on his head, December 3. Very often when attempting to explain some of these things to lay people, who know little about it, we may use terms that are more intelligible to them, realizing ourselves that from a medical standpoint that it is not the actual pathological situation, and I might have used the words "blood clot" in some of my discussions with the patient's wife.

Q. (By Mr. White): But from your observation of the case and your neurological examination there is no evidence whatsoever?

A. There was no evidence of any blood clot of any kind inside this man's head during his first admission to the hospital.

Q. (By Comm. Gray): How about the second admission? Did you find any evidence of blood clot during the second admission?

A. No, no. Our impression was that this was purely a thrombosis or plugging up of blood vessel, rather than a rupture of a blood vessel. [166]

Q. What is a thrombosis?

(Testimony of Ralph B. Cloward, M.D.)

Mr. White: Just one more question. I think perhaps Dr. Cloward has not described officially for the record just the condition he did find on February 26 when Mr. Piatt was returned to the hospital.

Q. (By Mr. White): Will you describe that for us? That is insofar as it was manifest?

Comm. Gray: On the second admission.

A. Yes.

Comm. Gray: I have the record here.

A. The patient was completely conscious. As a matter of fact, he said he hadn't lost consciousness at all in this vascular accident. On his examination immediately after his admission to the hospital, and I saw him a few minutes after he came in, he had complete paralysis of the left side of his face and marked weakness of both the left arm and leg. On encouragement and violent effort on the patient's part he was able to raise his left arm and use all of the muscles in this extremity. His face, however, was completely paralyzed so that he couldn't smile or pull up the corner of his mouth. I saw him, I think, three times that first day, and on the third visit, late in the evening, this apparent weakness which he had had in the morning had progressed to a complete paralysis of the left upper extremity so that he had no voluntary movement whatsoever in his hand furthermore, or upper arm. He was still able, however, to move his lower extremi- [167] ty, although the weakness here was

(Testimony of Ralph B. Cloward, M.D.)

more profound. And there was also change in the sensation of the left half of his body, there being a decrease in all forms of sensory stimulæ with the normal side.

Q. What was your diagnosis at that time—cerebral thrombosis? A. Yes.

Q. Will you explain for the record what that is?

A. I think I explained a little earlier the difference between thrombosis and hemorrhage. Had this paralysis been due to hemorrhage or rupture of a blood vessel his paralysis would have been complete and profound on his admission to the hospital or immediately after it happened. The fact that on his admission to the hospital he had merely weakness, without paralysis, a gradually progressive weakness to a paralyzed condition within twelve hours, indicated that the process in his brain producing the paralysis was one of slow formation, and that we recognize as thrombosis or plugging of one of the arteries of the brain.

Comm. Gray: Is there anything else, Mr. White?

Mr. White: I think that is all.

Comm. Gray: We will adjourn this hearing and transfer the case to San Francisco.

(June 30, 1943, 3:06 p.m. The hearing was adjourned.) [168]

Territory of Hawaii,
First Judicial Circuit—ss.

I, Carey S. Cowart, Certified Shorthand Reporter, do hereby certify that on the 30th day of June, 1943 I reported in shorthand the testimony adduced and proceedings had on a hearing before John C. Gray, deputy commissioner, U. S. Employees' Compensation Commission, Pacific District, at Honolulu, T. H., in Case No. DB-P-1-4042, John B. Piatt, claimant, versus Contractors, PNAB; and Liberty Mutual Insurance Company, respondents; I further certify that the foregoing 28 pages contains a full, true, and correct transcript of my shorthand notes taken as aforesaid.

Dated this 10th day of June, 1943.

CAREY S. COWART

Certified Shorthand Reporter.

[Endorsed]: Filed Sept. 7, 1944. [169]

In the District Court of the United States for the
Western District of Washington, Northern
Division

No. 851

LIBERTY MUTUAL INSURANCE COMPANY,
a corporation and Contractors, Pacific Naval
Air Bases, an association,

Libellants,

v.

WILLIAM A. MARSHALL, Deputy Commis-
sioner of United States Employees Compensa-
tion Commission for the Fourteenth District
and JOHN B. PIATT,

Respondents.

MOTION TO DISMISS

Comes now William A. Marshall, Deputy Com-
missioner of the United States Employees Compensa-
tion Commission for the Fourteenth Compensa-
tion District, defendant in the above entitled cause,
and respectfully moves the Court for an order dis-
missing the bill of complaint for mandatory in-
junction herein.

This motion is based upon the files and records
in the above entitled cause.

J. CHARLES DENNIS

United States Attorney

G. D. HILE

Asst. United States Attorney

Copy Received: Mar. 29, 1944.

EGGERMAN, ROSLING &
WILLIAMS

Attorneys for Libellants

[Endorsed]: Filed Apr. 5, 1944. [170]

[Title of District Court and Cause.]

ORDER GRANTING DEFENDANT JOHN B.
PIATT PERMISSION TO INTERVENE

This matter came on regularly for hearing before the undersigned, one of the judges of the above-entitled court, and defendant having made motion to intervene in the above cause upon the ground and for the reason that if judgment is entered herein in behalf of petitioner it will adversely affect John B. Piatt, defendant, and the court being fully advised in the premises, now therefore, it is

Ordered, Adjudged and Decreed that John B. Piatt be given and is hereby granted permission to intervene in the above-entitled cause.

Done in Open Court this 14th day of August, 1944.

JOHN C. BOWEN

Judge

Presented by:

KOENIGSBERG & SANFORD

Attorneys for Defendant

Approved as to form:

HERBERT O'HARE

Ass't U. S. Atty.

JOSEPH J. LANZA

Attny for Plff.

[Endorsed]: Filed Aug. 14, 1944. [171]

[Title of District Court and Cause.]

ORAL DECISION OF THE COURT
GRANTING MOTION TO DISMISS

Be It Remembered, that heretofore and on to-wit, October 18, 1944, at the hour of 2:00 p.m., the above entitled matter came regularly on for hearing on Respondents' Motion to Dismiss, before the Hon. John C. Bowen, one of the Judges of said Court;

Libellants appearing by Joseph J. Lanza, Esq., (Messrs. Eggerman, Rosling & Williams), their proctors and counsel;

Respondents appearing by L. M. Koenigsberg, Esq., (Messrs. Koenigsberg & Sanford), their proctors and counsel;

Whereupon, the following proceedings were had:

[172]

The Court: On December 1, 1942, the Claimant, John B. Piatt, while working at his desk in his office furnished by his employer, sustained a blow on his head by a falling light globe and light globe shade, weighing altogether about three and a half pounds.

The immediate results of that accident were that Mr. Piatt experienced dizziness immediately after receiving the blow, and sustained a laceration and puncture of the skin of the scalp.

He was conducted by two or more of his business associates to a first aid station where he received first aid and was sent home.

On the second day thereafter he returned to his office for the purpose of attending a conference, but had to leave the conference because of physical weakness and discomfort. Thereafter he was sent to a hospital where he received treatment for about twelve days.

After this first period of hospitalization he returned to his home and made daily visits to his office for the purpose of putting in some time on his business duties, but he usually did not put in a full day at his office and returned to his home earlier than the end of business hours each day. He thus partially attended to his business duties daily until about the 26th of February, 1943, when, while resting in the early morning he collapsed in the bathroom of his home with a paralytic stroke. He thereupon was re-hospitalized and continued in the hospital until about the 5th of May, 1943.

Off and on during most of the time from the day of his injury until the day of his discharge from the hospital [173] and down to the time of the hearings before the Deputy Commissioner, Mr. Piatt complained of headaches and dizziness and of being unable to concentrate his mind efficiently

on business tasks. These symptoms were likewise testified to by business associates of Mr. Piatt.

The Deputy Commissioner found that Mr. Piatt's present condition of total disability is the result of the accident which occurred on December 1, 1942. There is ample non-medical testimony in support of that finding. I do not take the view that there was no medical testimony tending to support the Deputy Commissioner's findings; on the contrary, I think there was some medical testimony in support of such findings. For example, Dr. Cloward's statement to Mrs. Piatt concerning the blood clot not dissolving as a reason for the Doctor keeping Mr. Piatt in bed in a reclining position longer than the Doctor had expected to do; and also Dr. Cloward's testimony that it could not be said positively whether the accident caused the paralysis or not, and that cerebral paralysis could develop quickly or gradually and progressively.

It is contended by Claimant that his paralysis developed gradually and progressively after the accident. Libelants contend that the blow on the claimant's head had nothing to do with his cerebral thrombosis which caused his disability.

It seems to me, without attempting to make a detailed analysis at this time, that the evidence in this record amply supports the Deputy Commissioner's findings and award. In fact, I do not see how one reading this record could come to any conclusion as to the cause of Mr. Piatt's disability [174] other than the one the Deputy Commissioner came to.

I am aware that three doctors gave it as their final opinion that the present disability, directly attributable to cerebral thrombosis, was not caused by this accident, but I have some considerable doubt whether or not either of these doctors had accurately in mind in expressing that opinion some of the vital facts underlying that opinion. While I realize these doctors have expressed conclusions different from those of the Deputy Commissioner, yet from the careful study that this record merits and which I have attempted to give it, I find myself not convinced by the medical opinions. On the other hand, I am, in view of the whole record including the non-medical testimony, convinced of the correctness of the Deputy Commissioner's findings and award.

I have taken the time necessary to carefully consider all of the authorities that Counsel have collected and exhaustively reviewed in their oral arguments before the Court. The great weight of Federal Court authority is to the effect that, even where all the medical testimony is all one way, the Deputy Commissioner is not bound by such medical testimony, if there is other competent testimony requiring a finding different from that indicated by the medical testimony.

Upon the authority of *Southern S. S. Co. vs. Norton*, 41 F. Supp. 108, *Ryan Stevedoring Co. vs. Norton*, 50 F. Supp. 221, *Frank Marra vs. Norton*, 56 F. (2d) 246, and *McNeelly vs. Sheppeard*, 89 F. (2d) 956, which in effect hold that the Deputy Commissioner is not required to follow the testi-

mony of medical experts where there is other com- [175] petent evidence to support the findings made by the Deputy Commissioner, it is the opinion and decision of the Court that the motion to dismiss the complaint should be granted and the Deputy Commissioner's findings and award should be confirmed.

Mr. Lanza: Exception.

The Court: The Employer and insurance carrier note an exception to the Court's ruling, and such exception is allowed.

Mr. Koenigsberg: Does your Honor wish to fix attorney fees in this matter at this time?

The Court: An attorney's fees of \$200 is allowed, payable from the award at a rate not to exceed \$20 from each bi-weekly installment.

[Endorsed]: Filed Oct. 20, 1944. [176]

[Title of District Court and Cause.]

ORDER GRANTING MOTION TO DISMISS
AND AFFIRMING FINDINGS AND
AWARD OF COMMISSIONER

This Matter came on regularly for hearing before the undersigned, one of the Judges of the above entitled court, Wednesday, October 11, 1944, at 10:00 o'clock a.m., and was continued from time to time, argument being concluded on October 16, 1944, plaintiffs appearing by J. Lanza of Egger-

man, Rosling & Williams, their attorneys, defendants appearing by their attorney, Herbert O'Hare, Assistant United States Attorney, Assistant to J. Charles Dennis, United States Attorney, and Leo M. Koenigsberg appearing for defendant, John B. Piatt, and it having been stipulated in open court by and between counsel for all the parties that the transcript of all the testimony taken before the Deputy Commissioner and all the exhibits including hospital records and others introduced at the hearings before the Deputy Commissioner and the reports of doctors who examined claimant be considered part of the files and records in this cause and the court be deemed to have considered all of said records for the purpose of making its determination and ruling, and the court having perused and considered all of said records, the argument of counsel, and the briefs [177) submitted by counsel, and being fully advised in the premises, and motion having been made by defendants to dismiss the petition for injunctive relief,

Now, therefore, it is

Ordered, Adjudged and Decreed that the motion to dismiss the petition to set aside the Deputy Commissioner's award as not being in accordance with law be and is hereby granted, and that the Deputy Commissioner's finding of fact and award be and is hereby affirmed.

It Is Further Ordered, Adjudged and Decreed that legal services rendered to defendant, John B. Piatt, by Leo M. Koenigsberg are of the reasonable value of \$200.00; that Leo M. Koenigsberg has

heretofore received from John B. Piatt the sum of \$25.00, out of which he expended \$2.00 for filing his appearance in this cause, and that the defendant, John B. Piatt, shall have credit for \$23.00, leaving a balance due of \$117.00 on said attorney's fees; that the plaintiff shall pay said sum to Leo M. Koenigsberg, which payment shall constitute a lien on the compensation now due or hereafter to become due to said defendant, John B. Piatt, and said plaintiff shall be permitted to satisfy said lien by deducting \$17.70 from each bi-weekly payment now due or hereafter to become due, making said deductions until such time as the full sum of \$117.00 paid to Leo M. Koenigsberg has been fully satisfied.

The plaintiff excepts to all of the foregoing and the exception is hereby allowed.

Done in Open Court this 20th day of October, 1944.

JOHN C. BOWEN

Judge

Presented by:

L. M. KOENIGSBERG

Attorney for Defendant Piatt

Approved:

HERBERT O'HARE

Asst. United States Attorney

By L. M. KOENIGSBERG

O. K. as to form:

JOSEPH J. LANZA

Attorneys for Plaintiff

[Endorsed]: Filed Oct. 20, 1944. [178]

[Title of District Court and Cause.]

NOTICE OF APPEAL TO CIRCUIT COURT
OF APPEALS

Notice Is Hereby Given that Liberty Mutual Insurance Company, a corporation, and Contractors, Pacific Naval Air Bases, an association, libelants above named, hereby appeal to the Circuit Court of Appeals for the Ninth Circuit from the order granting motion to dismiss and affirming findings and award of Commissioner entered in this action on the 20th day of October, 1944.

JOSEPH J. LANZA
EGGERMAN, ROSLING &
WILLIAMS

Attorneys for Libellants

Address: 918 Vance Building, Seattle, Wash.

Received a copy of the within Notice this 16 day of Jan., 1945.

J. CHARLES DENNIS
U. S. Attorney
Attorney for William A.
Marshall

Copy Received. Date 1-16-1945.

KOENIGSBERG & SANFORD
Attorneys for Defendant
By B. TAYLOR

[Endorsed]: Filed Jan. 16, 1945. [179]

United States Fidelity and Guaranty Company
Baltimore, Maryland

No. \$

In the District Court of the United States for the
Western District of Washington, Northern
Division

No. 851

LIBERTY MUTUAL INSURANCE COMPANY,
a corporation, and CONTRACTORS, PA-
CIFIC NAVAL AIR BASES, an Association,
Libelants,

vs.

WM. A. MARSHALL, Deputy Commissioner of
the United States Employees Compensation
Commission for the 14th Compensation Dis-
trict, and JOHN B. PIATT,
Respondents.

Know All Men by These Presents: That we,
Liberty Mutual Insurance Company, a corpora-
tion, and Contractors, Pacific Naval Air Bases, an
Association, as Principals, and United States Fi-
delity and Guaranty Company, a corporation of
Baltimore, Maryland, authorized to do the business
of surety in the State of Washington, as surety,
acknowledge ourselves to be jointly indebted to
Wm. A. Marshall, Deputy Commissioner of the
United States Employees Compensation Commis-
sion for the 14th Compensation District, and John

B. Piatt, Respondents, in the above entitled cause, in the sum of Two Hundred Fifty and No/100 (\$250.00) Dollars, conditioned that, whereas, on the 20th day of October, 1944, in the District Court of the United States for the Western District of Washington, Northern Division, in a suit pending in that Court wherein Liberty Mutual Insurance Company, a corporation, and Contractors, Pacific Naval Air Bases, an Association, were libelants, and Wm. A. Marshall, Deputy Commissioner of the United States Employees Compensation Commission for the 14th Compensation District, and John B. Piatt, were Respondents, an order was entered granting motion to dismiss and affirming findings and award of Commissioner, and the said Libelants having filed in the office of the Clerk of the said District Court a notice of appeal to the United States Circuit Court of Appeals for the Ninth Circuit, to be held in the City of San Francisco, in the State of California.

Now, Therefore, the condition of the above obligation is such, that if the said Liberty Mutual Insurance Company, a corporation, and Contractors, Pacific Naval Air Bases, an Association, shall prosecute its appeal to effect and answer all costs, if the appeal is dismissed or by judgment affirmed, or all such costs as the appellate court may award if the judgment is modified, then the above obligation is void, else to remain in full force and effect.

Sealed with our seals and dated this 12th day of January, 1945.

LIBERTY MUTUAL INSURANCE
COMPANY, and CONTRACTORS,
PACIFIC NAVAL AIR BASES, an
Association,

By JOSEPH J. LANZA,
one of their attorneys

[Seal] UNITED STATES FIDELITY AND
GUARANTY COMPANY

By JOHN C. McCOLLISTER
Attorney-in-fact. [180]

State of Washington
County of King—ss.

On the 12th day of January, 1945, before me personally appeared John C. McCollister to me known to be the Attorney-in-fact of the corporation that executed the within and foregoing instrument, as surety, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

[Seal] J. C. BEERON
Notary Public in and for the State of Washington,
residing at Seattle.

State of Washington

County of King—ss.

On this 16th day of January, 1945, before me personally appeared Joseph J. Lanza, to me known to be one of the attorneys for and on behalf of said Liberty Mutual Insurance Company, a corporation, and Contractors, Pacific Naval Air Bases, an association, that executed the within and foregoing instrument as principals, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation and association for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

In Witness Whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

KATHRYN BRYAN

Notary Public in and for the State of Washington,
residing at Seattle

[Endorsed]: Filed Jan. 16, 1945. [181]

[Title of District Court and Cause.]

STATEMENT OF POINTS ON WHICH APPELLANTS INTEND TO RELY ON APPEAL

The following is a concise statement of the points on which Appellants intend to rely on appeal:

1. That there is no substantial evidence in the record to support the finding of the Deputy Commissioner that the accident that occurred on December 1, 1942, was the direct proximate cause of

the cerebral thrombosis that occurred on February 27, 1943.

2. That the Claimant failed to sustain the burden of proof upon the issue of whether the accident that occurred on December 1, 1942, was the direct and proximate cause of the cerebral thrombosis that occurred on February 27, 1943.

3. That the finding of the Deputy Commissioner as above, is a mere assumption based upon possibility and conjecture instead of substantial proof, and is therefore not in accordance with law.

4. That the Deputy Commissioner in making the finding as above, ignored all of the medical evidence presented herein.

5. That the United States District Court for the Western District of Washington, Northern Division, erred in entering its order granting Defendants' motion to dismiss and affirming the findings and award of the Deputy Commissioner.

Dated this 20th day of January, 1945.

JOSEPH J. LANZA

EGGERMAN, ROSLING &
WILLIAMS

Attorneys for Appellant.

Received a copy of the within Statement this 20th day of Jan. 1945.

J. CHARLES DENNIS,

Atty. for Wm. A. Marshall

Copy Received. Date 1-20-1945.

KOENIGSBERG & SANFORD

[Endorsed]: Filed Jan. 20, 1945. [182]

[Title of District Court and Cause.]

APPELLANTS' DESIGNATION OF RECORD,
PROCEEDINGS AND EVIDENCE TO BE
CONTAINED IN THE RECORD ON
APPEAL

Come now the Appellants above named, and pursuant to Rule 75 of the Rules of Civil Procedure pertaining to record on appeal to the Circuit Court of Appeals, herewith designates the following portion of the record, proceedings and evidence to be contained in the record on appeal:

1. Bill of complaint for mandatory injunction filed December 29, 1943 and Exhibit "A" thereto attached.

2. Certification of record of Deputy Commissioner Wm. A. Marshall filed January 22, 1944, including the following:

a. Transcript of testimony taken at hearing held by Deputy Commissioner John C. Gray at Honolulu, T. H., on June 2, 1943.

b. Employer's and insurance carrier's Exhibit "A" (Part 1), being photostatic copies of hospital record.

c. Employer's and insurance carrier's Exhibit "A" (Part 2), being photostatic copies of hospital record.

d. Report of Dr. Howard A. Brown, dated June 23, 1943.

e. Report of Dr. Ernest H. Falconer, M.D., dated June 23, 1943. [183]

f. Telegram addressed to John B. Piatt, dated June 11, 1943 and signed by Dr. Robert Bulman.

g. Compensation order filed by Wm. A. Marshall on November 29, 1943.

3. Certification of record of Deputy Commissioner Wm. A. Marshall filed September 6, 1944, including the following:

a. Transcript of record of a continued hearing held before Deputy Commissioner Gray at Honolulu on June 30, 1944.

4. Motion to dismiss filed April 5, 1944.

5. Order granting defendant John B. Piatt permission to intervene filed August 14, 1944.

6. Transcript of oral decision of the court granting motion to dismiss.

7. Order granting motion to dismiss and affirming findings and award of Commissioner filed October 20, 1944.

8. Notice of appeal to Circuit Court of Appeals filed January 16, 1945.

9. Cost bond on appeal filed January 16, 1945.

10. Appellants' designation of contents of record on appeal filed January 20, 1945.

11. Statement of points on which appellants intend to rely appeal.

12. Certificate of clerk to transcript of record on appeal.

Dated this 20th day of January, 1945.

JOSEPH J. LANZA

EGGERMAN, ROSLING &

WILLIAMS

Attorneys for Appellants

Received a copy of the within Designation this 20th day of Jan., 1945.

J. CHARLES DENNIS

Attorney for Wm. A. Marshall

Copy Received. Date 1-20-1945.

KOENIGSBERG & SANFORD

Attorney for Defendant

By B. TAYLOR

[Endorsed]: Filed Jan. 20, 1945. [184]

[Title of District Court and Cause.]

STIPULATION AND APPLICATION FOR
ORDER FOR TRANSMITTAL OF EX-
HIBITS TO APPELLATE COURT

It Is Hereby Stipulated between appellants and appellees, through their respective attorneys of record, that an order may be entered herein directing the Clerk of this court to transfer to the appellate court the original exhibits known as "Employer's and Insurance Carrier's Exhibit A (Part 1)" and "Employer's and Insurance Carrier's Exhibit A (Part 2)" for purposes of inspection by the appellate court in connection with the appeal now pending herein.

Dated this 17th day of February, 1945.

EGGERMAN, ROSLING &
WILLIAMS

JOSEPH J. LANZA

Attorneys for Appellants

J. CHARLES DENNIS

U. S. District Attorney

Attorneys for Appellee

Wm. A. Marshall

LEO M. KOENIGSBERG

Attorney for Appellee

John B. Piatt

[Endorsed]: Filed Feb. 19, 1945. [185]

[Title of District Court and Cause.]

ORDER DIRECTING CLERK TO SEND
ORIGINAL EXHIBITS TO APPELLATE
COURT

It Having Been Stipulated Herein between appellants and appellees thru their respective attorneys of record, that an order may be entered herein directing the Clerk to transmit the original exhibits known as "Employer's and Insurance Carrier's Exhibit A (Part 1)" and "Employer's and Insurance Carrier's Exhibit A (Part 2)", for purposes of inspection by the appellate court, and this court being of the opinion that the original of said exhibits should be inspected by the appellate court, upon the ground that said exhibits are not readily copiable into the record, now therefore

It Is Hereby Ordered that the Clerk of this court transmit to the appellate court the originals of said exhibits for purposes of inspection by the appellate court in connection with the appeal pending herein.

Done in Open Court this 19th day of February, 1945.

JOHN C. BOWEN

District Judge

Presented by

JOSEPH J. LANZA

of Attorneys for Appellants

Approved as to form.

HERBERT O'HARE

Asst. U. S. Atty.

Approved.

L. M. KOENIGSBERG

[Endorsed]: Filed Feb. 19, 1945. [186]

[Title of District Court and Cause.]

STIPULATION FOR ORDER EXTENDING
THE TIME FOR FILING THE RECORD
ON APPEAL AND DOCKETING OF
ACTION

Pursuant to Rule 73 (g) of the Rules of Civil Procedure it is hereby stipulated between Appellants and Appellees through their respective attorneys of record, that the District Court may extend the time for filing the record on appeal with the

appellate court and docketing the action in that court to the 10th day of March, 1945.

Dated this 23 day of February, 1945.

JOSEPH J. LANZA
EGGERMAN, ROSLING &
WILLIAMS

Attorneys for Appellants
J. CHARLES DENNIS

U. S. District Attorney
HERBERT O'HARE

Asst. U. S. District Attorney
Attorneys for W. A. Marshall
L. M. KOENIGSBERG

Attorney for John B. Piatt

[Endorsed]: Filed Feb. 23, 1945. [187]

[Title of District Court and Cause.]

ORDER ON STIPULATION EXTENDING
TIME FOR FILING THE RECORD ON
APPEAL AND DOCKETING THE ACTION

Pursuant to stipulation filed herein and by virtue of the authority granted to the District Court by Rule 73 (g) of the Rules of Civil Procedure, now therefore

It Is Hereby Ordered that the time for filing the record on appeal with the appellate court and docketing the action in that court, is hereby extended to the 10th day of March, 1945.

Done in Open Court this 23 day of February,
1945.

JOHN C. BOWEN

District Judge

Presented by:

JOSEPH J. LANZA

Of Counsel for Libelants

O. K. for entry:

HERBERT O'HARE

Asst. U. S. District Atty.

Atty. for Wm. A. Marshall

L. M. KOENIGSBERG

Attorney for John B. Piatt

[Endorsed]: Filed Feb. 23, 1945. [188]

[Title of District Court and Cause.]

APPELLANTS' SUPPLEMENTAL DESIGNA-
TION OF RECORD TO BE CONTAINED
IN THE RECORD ON APPEAL

Come Now the appellants above named, and here-
with designate the additional portion of the record
to be contained in the record on appeal:

1. Stipulation and application for order for
transmittal of original exhibits to appellate court.
2. Order directing Clerk to transmit original
exhibits to appellate court.
3. Clerk's certificate as to exhibit transmitted
to appellate court.

4. Appellants' supplemental designation of record.

Dated this 19th day of February, 1945.

JOSEPH J. LANZA
EGGERMAN, ROSLING &
WILLIAMS

Attorneys for Appellants

Copy received 2/16/45.

L. M. KOENIGSBERG

Copy received 2/19/45.

HERBERT O'HARE
Asst. U. S. Atty.

[Endorsed]: Filed Feb. 19, 1945. [189]

[Title of District Court and Cause.]

APPELLANTS SECOND SUPPLEMENTAL
DESIGNATION OF RECORD TO BE CON-
TAINED IN THE RECORD ON APPEAL

Come now the Appellants above named and the herewith designate the additional portion of the record to be contained in the record on appeal:

1. Stipulation and Order extending time for filing record and docketing case in the appellate court.

2. This second supplemental designation of record.

Dated this 23 day of February, 1945.

JOSEPH J. LANZA
EGGERMAN, ROSLING &
WILLIAMS

Attorneys for Appellants

Copy Received this 23 day of Feb. 1945:

L. M. KOENIGSBERG
Atty. for John B. Piatt
HERBERT O'HARE

Asst. U. S. District Attorney
Atty. for Wm. A. Marshall

[Endorsed]: Filed Feb. 23, 1945. [190]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD ON APPEAL

United States of America

Western District of Washington—ss.

I, Millard P. Thomas, Clerk of the United States District Court for the Western District of Washington, do hereby certify that the foregoing typewritten transcript of record, consisting of pages numbered 1 to 190, inclusive, is a full, true and complete copy of so much of the record, papers and other proceedings in the above and foregoing entitled cause as is required by Designation of Counsel filed and shown herein, as the same remain of record on file in the office of the Clerk of said District Court at Seattle and that the same constitute

[Endorsed]: No. 10995. United States Circuit Court of Appeals for the Ninth Circuit. Contractors, Pacific Naval Air Bases, an association, and Liberty Mutual Insurance Company, a corporation, Appellants, vs. Wm. A. Marshall, Deputy Commissioner of the United States Employees' Compensation Commission for the Fourteenth District and John B. Piatt, Appellees. Transcript of Record. Upon Appeal from the District Court of the United States for the Western District of Washington, Northern Division.

Filed March 2, 1945.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

The United States Circuit Court of Appeals
for the Ninth Circuit

No. 10995

LIBERTY MUTUAL INSURANCE COMPANY,
a corporation, and CONTRACTORS, PA-
CIFIC NAVAL AIR BASES, an Association,
Appellants,

vs.

WM. A. MARSHALL, Deputy Commissioner of
the United States Employees Compensation
Commission for the 14th Compensation Dis-
trict, and JOHN B. PIATT,

Appellees.

STIPULATION AND APPLICATION FOR
ORDER DISPENSING WITH THE RE-
PRODUCTION OR PRINTING OF EX-
HIBITS

It Is Hereby Stipulated between Appellants and Appellees, through their respective attorneys of record, that an order may be entered herein dispensing with the reproduction or printing of Exhibits known as "Employer's and Insurance Carrier's Exhibit 'A' (Part 1)" and "Employer's and Insurance Carrier's Exhibit 'A' (Part 2)", being copies of hospital records, laboratory reports, nurses records, and temperature, pulse and respiration sheets, upon the grounds and for the reason that the temperature, pulse and respiration sheets are

not of a printable type, and the cost of printing the balance of said records would prove expensive and unduly extend the length of the Transcript of Record to be printed herein.

It Is Further Stipulated that said Exhibits may be considered by this Court in the form in which they are included in the District Clerks Record on appeal, without reproduction.

This Application is based upon the affidavit of Joseph J. Lanza, attached.

Dated this 19th day of February, 1945.

EGGERMAN, ROSLING &
WILLIAMS

JOSEPH J. LANZA

Attorneys for Appellants.

J. CHARLES DENNIS

U. S. District Attorney

HERBERT O'HARE

Asst. U. S. District Attorney

Attorneys for Appellee,

William A. Marshall.

L. M. KOENIGSBERG

Attorney for Appellee,

John B. Piatt.

Ordered that the original exhibit "A" referred to herein, in two parts, need not be printed, but will be considered by the Court in its original form.

CURTIS D. WILBUR

Senior United States Circuit
Judge.

AFFIDAVIT IN SUPPORT OF FOREGOING
APPLICATION

State of Washington

County of King—ss.

Joseph J. Lanza, being first duly sworn on oath deposes and says: That he is an attorney at law, admitted to practice in the Courts of the State of Washington and in the District Court of the Ninth Circuit, and is one of the attorneys for Appellants in the above entitled and number cause; that he makes this affidavit in support of the foregoing application for order dispensing with the reproduction or printing of the Exhibits therein specified; that said Exhibits consist of forty-nine (49) pages of hospital records, laboratory reports, nurses records, and temperatures, pulse and respiration sheets; that a great portion thereof consisting of the temperature, pulse and respiration sheets, are not of a printable type; that while the balance of the records of said Exhibits are of a printable type, the printing of the same will prove expensive and unduly extend the size of the transcript of record to be printed herein.

JOSEPH J. LANZA

Subscribed and sworn to before me this 19 day of February, 1945.

[Seal] KATHRYN BRYAN

Notary Public in and for the State of Washington,
residing at Seattle.

[Endorsed]: Filed Mar. 5, 1945. Paul P.
O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

APPELLANTS' STATEMENT OF POINTS ON
WHICH THEY INTEND TO RELY ON
APPEAL AND DESIGNATION OF THE
RECORD DEEMED NECESSARY FOR
THE CONSIDERATION THEREOF

Come now Appellants and, pursuant to Sub-division 6, Rule 19, of the Rules of the United States Circuit Court of Appeals for the Ninth Circuit, herewith adopt the statement of points filed in the District Court upon which Appellants intend to rely on appeal, and herewith designate the entire transcript of record as prepared and certified by the Clerk of the District Court, to be printed for purposes of this appeal.

Dated this 23 day of February, 1945.

JOSEPH J. LANZA

EGGERMAN, ROSLING &

WILLIAMS

Attorneys for Appellants

Service of the foregoing by receipt of true copy thereof is hereby acknowledged this 23 day of February, 1945.

J. CHARLES DENNIS

U. S. District Attorney

HERBERT O'HARE

Asst. U. S. District Attorney

Attorneys for Wm. A. Marshall, Deputy Commissioner

L. M. KOENIGSBERG

Attorney for John B. Piatt

[Endorsed]: Filed Mar. 5, 1945. Paul P. O'Brien, Clerk.